

## Chapter 6

### Human Rights

#### A. GENERAL

##### 1. Overview

On assuming office, President Barack H. Obama announced a renewed focus on promoting and protecting human rights. On December 14, 2009, Secretary of State Hillary Rodham Clinton spoke about the “Human Rights Agenda for the 21st Century” at Georgetown University in Washington, D.C. In her remarks, excerpted below, Secretary Clinton outlined four elements of the Obama administration’s approach to promoting international human rights, democracy, and development. The full text of Secretary Clinton’s speech is available at [www.state.gov/secretary/rm/2009a/12/133544.htm](http://www.state.gov/secretary/rm/2009a/12/133544.htm).

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Our human rights agenda for the 21st century is to make human rights a human reality, and the first step is to see human rights in a broad context. Of course, people must be free from the oppression of tyranny, from torture, from discrimination, from the fear of leaders who will imprison or “disappear” them. But they also must be free from the oppression of want—want of food, want of health, want of education, and want of equality in law and in fact.

To fulfill their potential, people must be free to choose laws and leaders; to share and access information, to speak, criticize, and debate. They must be free to worship, associate, and to love in the way that they choose. And they must be free to pursue the dignity that comes with self-improvement and self-reliance, to build their minds and their skills, to bring their goods to the marketplace, and participate in the process of innovation. Human rights have both negative and positive requirements. People should be free from tyranny in whatever form, and they should also be free to seize the opportunities of a full life. That is why supporting democracy and fostering development are cornerstones of our 21st century human rights agenda.

This Administration, like others before us, will promote, support, and defend democracy. We will relinquish neither the word nor the idea to those who have used it too narrowly, or to justify unwise policies. We stand for democracy not because we want other countries to be like us, but because we want all people to enjoy the consistent protection of the rights that are naturally theirs, whether they were born in Tallahassee or Tehran. Democracy has proven the best political system for making human rights a human reality over the long term.

But it is crucial that we clarify what we mean when we talk about democracy, because democracy means not only elections to choose leaders, but also active citizens and a free press and an independent judiciary and transparent and responsive institutions that are accountable to all citizens and protect their rights equally and fairly. In democracies, respecting rights isn’t a choice leaders make day by day; it is the reason they govern. Democracies protect and respect citizens

every day, not just on Election Day. And democracies demonstrate their greatness not by insisting they are perfect, but by using their institutions and their principles to make themselves and their union more perfect, just as our country continues to do after 233 years.

At the same time, human development must also be part of our human rights agenda. Because basic levels of well-being—food, shelter, health, and education—and of public common goods like environmental sustainability, protection against pandemic disease, provisions for refugees—are necessary for people to exercise their rights, and because human development and democracy are mutually reinforcing. Democratic governments are not likely to survive long if their citizens do not have the basic necessities of life. The desperation caused by poverty and disease often leads to violence that further imperils the rights of people and threatens the stability of governments. Democracies that deliver on rights, opportunities, and development for their people are stable, strong, and most likely to enable people to live up to their potential.

So human rights, democracy, and development are not three separate goals with three separate agendas. That view doesn't reflect the reality we face. To make a real and long-term difference in people's lives, we have to tackle all three simultaneously with a commitment that is smart, strategic, determined, and long-term. We should measure our success by asking this question: Are more people in more places better able to exercise their universal rights and live up to their potential because of our actions?

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Now, I don't need to tell you that challenges we face are diverse and complicated. And there is not one approach or formula, doctrine or theory that can be easily applied to every situation. But I want to outline four elements of the Obama Administration's approach to putting our principles into action, and share with you some of the challenges we face in doing so.

First, a commitment to human rights starts with universal standards and with holding everyone accountable to those standards, including ourselves. On his second full day in office, President Obama issued an executive order prohibiting the use of torture or official cruelty by any U.S. official and ordered the closure of Guantanamo Bay. Next year, we will report on human trafficking, as we do every year, but this time, not only just on other countries, but also on our own. And we will participate through the United Nations in the Universal Periodic Review of our own human rights record, just as we encourage other nations to do.

By holding ourselves accountable, we reinforce our moral authority to demand that all governments adhere to obligations under international law; among them, not to torture, arbitrarily detain and persecute dissenters, or engage in political killings. Our government and the international community must counter the pretensions of those who deny or abdicate their responsibilities and hold violators to account.

Sometimes, we will have the most impact by publicly denouncing a government action, like the coup in Honduras or violence in Guinea. Other times, we will be more likely to help the oppressed by engaging in tough negotiations behind closed doors, like pressing China and Russia as part of our broader agenda. In every instance, our aim will be to make a difference, not to prove a point.

Calling for accountability doesn't start or stop, however, at naming offenders. Our goal is to encourage—even demand—that governments must also take responsibility by putting human rights into law and embedding them in government institutions; by building strong, independent courts, competent and disciplined police and law enforcement. And once rights are established, governments should be expected to resist the temptation to restrict freedom of expression when

criticism arises, and to be vigilant in preventing law from becoming an instrument of oppression, as bills like the one under consideration in Uganda would do to criminalize homosexuality.

We know that all governments and all leaders sometimes fall short. So there have to be internal mechanisms of accountability when rights are violated. Often the toughest test for governments, which is essential to the protection of human rights, is absorbing and accepting criticism. And here too, we should lead by example. In the last six decades we have done this—imperfectly at times but with significant outcomes—from making amends for the internment of our own Japanese American citizens in World War II, to establishing legal recourse for victims of discrimination in the Jim Crow South, to passing hate crimes legislation to include attacks against gays and lesbians. When injustice anywhere is ignored, justice everywhere is denied. Acknowledging and remedying mistakes does not make us weaker, it reaffirms the strength of our principles and institutions.

Second, we must be pragmatic and agile in pursuit of our human rights agenda—not compromising on our principles, but doing what is most likely to make them real. And we will use all the tools at our disposal, and when we run up against a wall, we will not retreat with resignation or recriminations, or repeatedly run up against the same wall, but respond with strategic resolve to find another way to effect change and improve people’s lives.

We acknowledge that one size does not fit all. And when old approaches aren’t working, we won’t be afraid to attempt new ones, as we have this year by ending the stalemate of isolation and instead pursuing measured engagement with Burma. In Iran, we have offered to negotiate directly with the government on nuclear issues, but have at the same time expressed solidarity with those inside Iran struggling for democratic change. As President Obama said in his Nobel speech, “They have us on their side.”

And we will hold governments accountable for their actions, as we have just recently by terminating Millennium Challenge Corporation grants this year for Madagascar and Niger in the wake of government behavior. As the President said last week, “we must try as best we can to balance isolation and engagement; pressure and incentives, so that human rights and dignity are advanced over time.”

We are also working for positive change within multilateral institutions. They are valuable tools that, when in their best, leverage the efforts of many countries around a common purpose. So we have rejoined the UN Human Rights Council not because we don’t see its flaws, but because we think that participating gives us the best chance to be a constructive influence.

In our first session, we cosponsored the successful resolution on Freedom of Expression, a forceful declaration of principle at a time when that freedom is jeopardized by new efforts to constrain religious practice, including recently in Switzerland, and by efforts to criminalize the defamation of religion—a false solution which exchanges one wrong for another. And in the United Nations Security Council, I was privileged to chair the September session where we passed a resolution mandating protections against sexual violence in armed conflict.

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The third element of our approach is that we support change driven by citizens and their communities. The project of making human rights a human reality cannot be just one for governments. It requires cooperation among individuals and organizations within communities and across borders. It means that we work with others who share our commitment to securing lives of dignity for all who share the bonds of humanity.

. . . Outside governments and global civil society cannot impose change, but we can promote and bolster it and defend it. We can encourage and provide support for local grassroots leaders, providing a lifeline of protection to human rights and democracy activists when they get in trouble, as they often do, for raising sensitive issues and voicing dissent. This means using tools like our Global Human Rights Defenders Fund, which in the last year has provided targeted legal and relocation assistance to 170 human rights defenders around the world.

And we can stand with these defenders publicly . . .

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We can give them access to public forums that lend visibility to their ideas, and continue to press for a role for nongovernmental organizations in multilateral institutions like the United Nations and the OSCE. And we can enlist other allies like international labor unions who were instrumental in the Solidarity movement in Poland or religious organizations who are championing the rights of people living with HIV/AIDS in Africa.

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. . . NGOs and civil society leaders need the financial, technical and political support we provide. Many repressive regimes have tried to limit the independence and effectiveness of activists and NGOs by restricting their activities, including more than 25 governments that have recently adopted new restrictions. But our funding and support can give a foothold to local organizations, training programs, and independent media. And of course, one of the most important ways that we and others in the international community can lay the foundation for change from the bottom up is through targeted assistance to those in need, and through partnerships that foster broad-based economic development.

To build success for the long run, our development assistance needs to be as effective as possible at delivering results and paving the way for broad-based growth and long-term self-reliance. Beyond giving people the capacity to meet their material needs for today, economic empowerment should give them a stake in securing their own futures, in seeing their societies become the kind of democracies that protect rights and govern fairly. So we will pursue a rights-respecting approach to development—consulting with local communities, ensuring transparency, midwife-ing accountable institutions—so our development activities act in concert with our efforts to support democratic governance. That is the pressing challenge we face in Afghanistan and Pakistan today.

The fourth element of our approach is that we will widen our focus. We will not forget that positive change must be reinforced and strengthened where hope is on the rise, and we will not ignore or overlook places of seemingly intractable tragedy and despair. Where human lives hang in the balance, we must do what we can to tilt that balance toward a better future.

Our efforts to support those working for human rights, economic empowerment, and democratic governance are driven by commitment, not convenience. But they have to be sustained. They cannot be subject to the whims or the wins of political change in our own country. Democratic progress is urgent but it is not quick, and we should never take for granted its permanence. . . .

And when democratic change occurs, we cannot afford to become complacent. Instead, we have to continue reinforcing NGOs and the fledgling institutions of democracy. . . .

So we stand ready—both in our bilateral relationships and through international institutions—to help governments that have committed to improving themselves by assisting them in fighting corruption and helping train police forces and public servants. And we will support

regional organizations and institutions like the Organization of American States, the African Union, and the Association of Southeast Asian Nations, where they take their own steps to defend democratic principles and institutions.

Success stories deserve our attention so they continue to make progress and also serve as a model for others. And even as we reinforce the successes, conscience demands that we are not cowed by the overwhelming difficulty of making inroads against misery in the hard places like Sudan, Congo, North Korea, Zimbabwe, or on the hard issues like ending gender inequality and discrimination against gays and lesbians, from the Middle East to Latin America, Africa to Asia.

Now, we have to continue to press for solutions in Sudan where ongoing tensions threaten to add to the devastation wrought by genocide in Darfur and an overwhelming refugee crisis. We will work to identify ways that we and our partners can enhance human security, while at the same time focusing greater attention on efforts to prevent genocide elsewhere.

And of course, we have to remain focused on women—women’s rights, women’s roles, and women’s responsibilities. As I said in Beijing in 1995, “human rights are women’s rights, and women’s rights are human rights,” but oh, I wish it could be so easily translated into action and changes. That ideal is far from being realized in so many places around our world, but there is no place that so epitomizes the very difficult, tragic circumstances confronting women than in eastern Congo.

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So those four aspects of our approach—accountability, principled pragmatism, partnering from the bottom up, keeping a wide focus where rights are at stake—will help build a foundation that enables people to stand and rise above poverty, hunger, and disease and that secures their rights under democratic governance. We must lift the ceiling of oppression, corruption, and violence.

And we must light a fire of human potential through access to education and economic opportunity. Build the foundation, lift the ceiling, and light the fire all together, all at once. Because when a person has food and education but not the freedom to discuss and debate with fellow citizens, he is denied the life he deserves. And when a person is too hungry or sick to work or vote or worship, she is denied a life she deserves. Freedom doesn’t come in half measures, and partial remedies cannot redress the whole problem.

But we know that the champions of human potential have never had it easy. We may call rights inalienable, but making them so has always been hard work. And no matter how clearly we see our ideals, taking action to make them real requires tough choices. Even if everyone agrees that we should do whatever is most likely to improve the lives of people on the ground, we will not always agree on what course of action fits that description in every case. That is the nature of governing. We all know examples of good intentions that did not produce results, some that even produced unintended consequences that led to greater violations of human rights. And we can learn from the instances in which we have fallen short in the past, because those past difficulties are proof of how difficult progress is, but we do not accept the argument by some that progress in certain places is impossible, because we know progress happens.

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While the work in front of us is daunting and vast, we face the future together with partners on every continent, partners in faith-based organizations, NGOs, and socially responsible corporations, and partners in governments. . . .

In the end, this isn't just about what we do; it is about who we are. And we cannot be the people we are—people who believe in human rights—if we opt out of this fight. Believing in human rights means committing ourselves to action, and when we sign up for the promise of rights that apply everywhere, to everyone, that rights will be able to protect and enable human dignity, we also sign up for the hard work of making that promise a reality.

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On International Human Rights Day, December 10, 2009, various administration officials made statements marking the occasion and summarizing the steps the administration had taken to promote human rights. One of those statements, by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, is excerpted below and available at <http://usun.state.gov/briefing/statements/2009/133354.htm>. This chapter provides additional details on the initiatives outlined in Secretary Clinton's and Ambassador Rice's statements, as well as other developments during the year.

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In his first days in office, President Obama banned the use of torture, reaffirmed America's commitment to the Geneva Conventions, and ordered the prison at Guantanamo Bay closed. In doing so, the President rejected the false choice between our security and our values and took a significant step toward reestablishing America's leadership on issues of universal human rights.

In March, the United States supported the decision of the prosecutor of the International Criminal Court to issue an arrest warrant for President Bashir of Sudan. [Editor's note: *See* Chapter 3.C.1.b.] We believe it is a vital human rights imperative to hold accountable those responsible for the heinous crimes in Darfur.

In May, the United States was elected to the UN Human Rights Council. While we recognize that it is a flawed body, we are no longer standing on the sidelines. Instead, we are working from within to strengthen and reform the Human Rights Council and help it live up to its potential. In July, I signed, on behalf of the United States, the United Nations Convention on the Rights of Persons with Disabilities, the first new human rights treaty of the 21st Century. . . .

The United States has also led efforts at the United Nations to promote the rights of women. During our Security Council Presidency in September, we secured the adoption of Resolution 1888 to help spur the international community to take action to end gender-based human rights atrocities. The United States also reversed its previous position and announced its support for a General Assembly declaration condemning human rights violations based on sexual orientation and gender identity.

Just last month, in the UN General Assembly's Third Committee, the United States supported resolutions condemning three nations that have egregiously violated the human rights of their citizens—Burma, North Korea and Iran. And for the first time, the United States joined consensus on General Assembly Resolutions on the right to food and the rights of the child.

Today, we rededicate ourselves to the continuing pursuit of human rights and human dignity for all.

## 2. Country Reports on Human Rights Practices

On February 25, 2009, the Department of State released the 2008 Country Reports on Human Rights Practices. The Department of State submits the document annually to Congress in compliance with §§ 116(d) and 502B(b) of the Foreign Assistance Act of 1961 ("FAA"), as amended, and § 504 of the Trade Act of 1974, as amended. These reports are often cited as a source for U.S. views on various aspects of human rights practice in other countries. At a press briefing on the release of the report, Secretary of State Clinton made remarks stressing the importance of human rights promotion in U.S. foreign policy. The report is available at [www.state.gov/g/drl/rls/hrrpt/2008](http://www.state.gov/g/drl/rls/hrrpt/2008); Secretary Clinton's remarks are available at [www.state.gov/secretary/rm/2009a/02/119786.htm](http://www.state.gov/secretary/rm/2009a/02/119786.htm).

## 3. Human Rights Council

On March 31, 2009, Secretary of State Clinton and Ambassador Rice announced that the United States would seek a seat on the UN Human Rights Council ("Council") for the 2009–2012 term. "The U.S. is seeking election to the Council," Ambassador Rice stated, "because we believe that working from within, we can make the Council a more effective forum to promote and protect human rights." See [www.state.gov/r/pa/prs/ps/2009/03/121049.htm](http://www.state.gov/r/pa/prs/ps/2009/03/121049.htm). See also Ambassador Rice's letter of April 22, 2009, to the President of the General Assembly, pledging the U.S. commitment to the promotion and protection of human rights. U.N. Doc. A/63/831.

On May 12 the General Assembly elected the United States to the Council. See Ambassador Rice's statement to the press following the vote, available at

<http://usun.state.gov/briefing/statements/2009/May/128514.htm>. The United States assumed its seat on June 19.

In a September 30 statement to the Council, Michael H. Posner, Assistant Secretary of State for Democracy, Human Rights and Labor, outlined U.S. objectives for participation in the body. Mr. Posner's statement, excerpted below, is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm). See also the remarks of Legal Adviser Harold Hongju Koh at a September 28 press conference in Geneva, available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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Last Wednesday, President Obama addressed the U.N. General Assembly and called for a new era of U.S. engagement with the world. He expressed his determination that the United States be a

leader in meeting complex challenges to global prosperity and peace. And he emphasized that respect for human rights and democracy is essential to sustained prosperity and lasting security.

In his speech, President Obama highlighted the passage in the U.N. Charter that reaffirms “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.” He went on to say that “(A)mong those rights is the freedom to speak your mind and worship as you please; the promise of equality of the races, and the opportunity for women and girls to pursue their own potential; the ability of citizens to have a say in how you are governed, and to have confidence in the administration of justice.” The President stated that “just as no nation should be forced to accept the tyranny of another nation, no individual should be forced to accept the tyranny of their own government.” And he pledged that “America will always stand with those who stand up for their dignity and their rights.”

Building on themes he sounded in his speech in Cairo earlier this year, the President has provided clear direction for our approach to the Council’s work. [Editor’s note: *See Daily Comp. Pres. Docs.*, 2009 DCPD No. 00436, pp. 1–11, for President Obama’s speech in Cairo.] It is guided by three tenets: a commitment to principled engagement; [a dedication to] apply consistently international human rights and humanitarian law; and a fidelity to the truth.

The Obama Administration’s decision to join the Council is an important part of our engagement. We come here in the spirit of Eleanor Roosevelt, the first chair of the Human Rights Commission, seeking to build on her noble tradition. We will support what the Council does well, but also will challenge those aspects of its work where we see the need for fundamental change. We will look for common ground, but we also will be ready to stand alone when we feel our principles and interests are at stake. We seek to build partnerships that transcend traditional geographic groupings and that are based on an appreciation of shared responsibilities to the world community. . . .

The second tenet is a dedication to apply consistently international human rights and international humanitarian law to all countries in the world, including ourselves. We seek to lead by example, by meeting our own obligations under both domestic and international law. Following the attacks on September 11, 2001 the previous U.S. administration adopted a number of policies and practices that deviated from our founding principles. President Obama’s decision on his second day in office to end abusive interrogations, to close the detention facility at Guantanamo and to review security detention policies more generally are emblematic of our commitment to apply these universal principles to ourselves.

By universality we mean that all governments—no exceptions—are responsible for ensuring the rights and freedoms spelled-out in international human rights and humanitarian law. Next year, we will report to the Council through its Universal Periodic Review procedures and to the Human Rights Committee under the International Covenant on Civil and Political Rights. We take these reporting processes seriously and call on all other U.N. members to do the same. Too often in the past, governments with poor human rights records have tried to disable the United Nations’ human rights machinery to shield their own practices from criticism. The protection of human rights everywhere is the legitimate business of everyone. There should be no exceptions to the protection of the rights of women.

It is almost 15 years since the Beijing World Conference and even longer since the Vienna Declaration and Programme of Action proclaimed “the human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.” It is past time for the HRC to bring about women’s equality before the law. . . .



The third tenet is fidelity to the truth. We will not hesitate to challenge resolutions and other actions that we believe undermine the effectiveness of the Council and its mandate. We are concerned by efforts by some Council members to eliminate or weaken country mandates. At the same time, the Council's approach to country specific mandates must be objective, unbiased and applied more consistently. We will continue to challenge the Council's disproportionate attention to Israel. This does not mean that we favor ignoring Israel's human rights record or exempting Israel from universal principles.

We also will urge the Council to devote its greatest attention to countries where there is a consistent pattern of gross human rights violations. We will work hard to defend the independence of human rights special procedures and work to ensure that they are given strong mandates, adequate resources and access to do their jobs properly.

Finally, we are concerned by the trend at the United Nations, and at the Council in particular, to marginalize the role and participation of NGOs. As the Council prepares for its 2011 review, we will work to ensure access and participation for civil society in the Council's proceedings.

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#### ***a. Human Rights Council resolutions***

During the United States' first full session as a member of the Human Rights Council, September 14–October 2, 2009, the Council adopted 28 resolutions. The United States cosponsored 12 resolutions, voted against three, and abstained from one. The United States delivered nine statements explaining its positions or votes or making general remarks on certain resolutions, as discussed immediately below and in sections B.2.c.(2), C.1., D.1.b., D.2.a., D.3.a., D.4., D.5., and D.6.a. of this chapter. The texts of Human Rights Council resolutions are available by searching the database at <http://ap.ohchr.org/Documents/gmainec.aspx>.

##### ***(1) Freedom of opinion and expression***

On October 2, 2009, the Human Rights Council adopted by consensus a resolution on freedom of opinion and expression, which the United States and the Arab Republic of Egypt sponsored and 47 other nations cosponsored. U.N. Doc. A/HRC/RES/12/16. On October 6, the Department of State issued a statement, set forth below, noting the significance of the resolution. The statement is also available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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The governments of the United States and the Arab Republic of Egypt take this opportunity to underscore the constructive partnership between our two nations in sponsoring the landmark resolution on the freedom of expression passed October 2 by the UN Human Rights Council. The

United States and Egypt further note that this important resolution, the first of its kind in many years, enjoyed the co-sponsorship of 49 nations from around the world.

The resolution, through which consensus was restored in the Human Rights Council on an issue marred by controversy in recent years, is a reflection of an open and genuine dialogue on freedom of expression. It unequivocally supports free speech and recognizes the central role open debate plays in combating racism, xenophobia, and other forms of intolerance.

In adopting this resolution, the Human Rights Council gives clear voice to a shared international understanding of the responsibilities of governments to condemn and address hate speech and to promote respect and tolerance.

## *(2) Right to truth*

On October 20, 2009, the United States cosponsored and joined consensus on a Human Rights Council resolution on the “Right to the truth.” U.N. Doc. A/HRC/RES/12/12. The U.S. Mission to Geneva issued a statement explaining the U.S. position on the resolution, which noted that the right to truth “may be characterized differently in various legal systems, such as our own, as the right to be informed or freedom of information or the right to know.” See [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

## *(3) Traditional values*

On October 2, 2009, the United States voted against a resolution in the Human Rights Council on “Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind.” Douglas M. Griffiths, Chargé d’Affaires, a.i., U.S. Mission to the United Nations, Geneva, delivered a statement, excerpted below, explaining the U.S. vote. The full text of the U.S. statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm). The Human Rights Council adopted the resolution by a vote of 26 in favor and 15 opposed, with six abstentions. U.N. Doc. A/HRC/RES/12/21.

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The United States approached this resolution on traditional values with an open mind and listened carefully to the concerns of others during the course of the negotiations, including the various arguments for and against such a resolution. We, along with others, worked with the Russian delegation to provide language in an effort to help improve the text and anchor it to international human rights law and the animating principles of this Council. . . .

In the end, however, we are unable to support this resolution as we still have concerns that the concept of traditional values, unmoored to human rights law, could undermine the universal principles enshrined in international human rights instruments, such as women’s rights, and the rights of minorities and other vulnerable groups.

We are also concerned that the term “traditional values” has not been clearly defined or understood and is thus so vague and open-ended that it could be used to legitimize human rights abuses.

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#### *(4) Transitional justice*

On October 1, 2009, the United States joined consensus when the Human Rights Council adopted a resolution on transitional justice. U.N. Doc. A/HRC/RES/12/11. Excerpts follow from the U.S. statement explaining the U.S. position on the resolution. The full text of the statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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... The United States strongly supports transitional justice initiatives and has long supported efforts to hold responsible the perpetrators of atrocities, such as genocide, war crimes, crimes against humanity, and other serious human rights abuses. We are among the largest donors and supporters of post-conflict justice initiatives in the world and will continue our leading role in this regard.

With respect to Operative Paragraph 17 and treatment of amnesties in the Secretary General report entitled “The rule of law and transitional justice in conflict and post-conflict societies” (S/2004/616), we note that transitional justice necessarily incorporates the full range of judicial and non-judicial measures, including individual prosecutions, reparations, truth-seeking, institutional reform, vetting procedures, or a combination thereof. As a fundamental part of this, truth-seeking mechanisms may, under certain circumstances, grant pardon to certain perpetrators based on their credible participation in a legitimate truth-seeking process.

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Paragraph 17 of the resolution, which the U.S. statement mentioned, called on states to help the United Nations in implementing the recommendations in the Secretary-General’s reports on the rule of law and transitional justice (U.N. Doc. S/2004/616) and enhancing UN support for the rule of law (U.N. Doc. A/61/636). The Secretary-General’s report on transitional justice found that amnesties could be a means to facilitate the return of displaced persons and former combatants that “should be encouraged,” but recommended that amnesties not be allowed in cases of genocide, war crimes, or crimes against humanity.

#### ***b. UN Fact Finding Mission on the Gaza Conflict***

On January 9, 2009, the UN Human Rights Council held a special session on “violations of human rights in the occupied territories” and mandated that a

fact finding mission be sent to investigate “all violations of international human rights law and international humanitarian law” by Israel against the Palestinian people. See U.N. Doc. A/HRC/S-9/L1. On September 29, 2009, Justice Richard L. Goldstone, head of the United Nations Fact Finding Mission on the Gaza Conflict, addressed the Human Rights Council on the mission’s report (“Goldstone Report”). In connection with Justice Goldstone’s briefing, Michael Posner, Assistant Secretary for Human Rights, Democracy and Labor, provided the U.S. assessment of the Goldstone Report in a statement to the Council. Excerpts below provide an overview of the U.S. concerns about the report and views on how the Human Rights Council should address it. Chapter 18.A.1.b.(1) discusses Mr. Posner’s specific comments on the Goldstone Report’s allegations of violations of international humanitarian law. The full text of Mr. Posner’s statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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... I want to set my comments about this report in a broader context. Earlier this year President Obama expressed his deep concern over the loss of life and humanitarian suffering in both Israel and Gaza. He has also made clear his abiding commitment to comprehensive peace in the Middle East, in which two states, Israel and Palestine, live side by side in peace and security.

We have approached this report applying broad principles. First, we are ready to engage in the discussion of this report and the broader issues relating to Israel and the Palestinians in a fair and honest way. Although we believe that the document is deeply flawed and disagree sharply with its methodology and many of its recommendations, including their extraordinarily broad scope, we recognize Justice Goldstone’s distinguished record of public service in his own country, South Africa, and in the larger global efforts to promote justice—in the former Yugoslavia, in Rwanda, and elsewhere.

In engaging in discussions over this report, we must step back and take issue with the grossly disproportionate attention the Council pays to one country, Israel. When the United States decided to seek a seat on the Council, we stated our clear intention to address this lack of balance in the Council’s proceedings. We urge our fellow members to join us in firmly rejecting this double standard. This is a high priority for us, one which we believe needs to be addressed now. Israel is the only country that has its own agenda item at this Council. In the past 5 years, the Council and its predecessor organization, the UN Commission on Human Rights, have commissioned more than 20 reports on Israel, far more than any other country in the world. Since the Council was created in 2006, it has passed 20 resolutions on Israel, more than the number of resolutions for all 191 other UN members combined. The Council also has held 11 special sessions, 5 focused exclusively on Israel. This is unfair, and it prevents the Council from devoting adequate time and attention to many other situations around the world that deserve our attention. We hope that Council members will join us in approaching the important work of this Council in a new, constructive spirit that does not seek to vilify any particular UN member nation.

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We urge members of this Council to commit with us to pass a consensus resolution that encourages Israel to investigate and address allegations in the Report thoroughly through credible

domestic processes. It should also call on the Palestinians to launch credible investigations to address allegations of Hamas abuses and demand that Hamas stop its clear violations. If undertaken properly and fairly, these reviews can serve as important confidence building measures that will support our larger, essential objective, which is our shared quest for a just and lasting peace in the Middle East.

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On October 15–16, 2009, the Council held its twelfth special session, focusing on the Goldstone Report. Douglas M. Griffiths, Chargé d’Affaires, a.i., U.S. Mission to the United Nations, Geneva, addressed the Council on October 15. Excerpts follow from the U.S. comments on how the Council could move forward constructively, notwithstanding the United States’ concerns with the Goldstone Report and its view that the special session was not the appropriate forum for such discussion. The full text of the U.S. statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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... Fairness must be a hallmark of our approach to this Report, to the conflict it addresses, and indeed to all our work together as a Council. Fairness is the only way that this institution can strengthen its credibility and foster constructive dialogue on the important issues we must together address. Fairness means an acknowledgment of Israel’s fundamental right to self-defense, a right that is at the core of the international system and of each of our obligations as sovereign nations. Fairness also requires recognition of the civilian casualties that resulted from the Gaza conflict, and the destruction of property and livelihoods. The Report makes clear that the Gaza operation was commenced lawfully after civilians in Israel came under sustained attack by Hamas, in violation of international human rights and humanitarian law. The Report looks at allegations on all sides of the conflict, and this body must do the same.

A second key element is the wider context of negotiations in the region. We stand at an important moment, and must all be mindful of the larger context of ongoing efforts to restart permanent status negotiations that would lead to the creation of a Palestinian state. The resolution of the very difficult and painful issues involved will come not in the press, not in a court, and not even in this chamber. It can come only when the needs of both sides to this conflict are met in two states, where Israelis and Palestinians each live in peace and security.

A third key element of our approach is appreciation of the complex interplay of the principle of self-defense and compliance with the laws of war, including responsibilities for civilian protection. If we as a Council insist on oversimplifying or overlooking the difficult challenges of humanitarian protection, we will fail in our duty. . . .

A fourth indispensable element of our approach is accountability. There have been calls for accountability on all sides of this conflict. These calls come not just from political leaders in international organizations and government officials, but from husbands, wives, parents and children who live with the pain of losing innocent loved ones to violence and with the threat of imminent danger to their families. These calls cannot be ignored or deflected. They must be heard, and they deserve a response.

These four principles, a commitment to fairness, an understanding of the wider context of negotiations, an appreciation of the interplay of the right to self-defense, the responsibility for civilian protection and the conduct of hostilities in heavily populated areas, and an emphasis on accountability should guide this Council in our further deliberations on this Report. Undertaking such deliberations takes time; constructive dialogue cannot be carried out in the heat of confrontation or in a rush to a predetermined conclusion. The central responsibility here lies with the parties themselves, each of whom should uphold its obligation to deal credibly with the allegations through domestic processes. We urge this Council and individual Member States to insist that Hamas cease ongoing violations of international humanitarian law. The Palestinian Authority has institutions that can investigate alleged violations in the West Bank, and we urge it to do so.

Israel enjoys the benefit of a strong, credible legal system, democratic institutions and a vibrant civil society that can ensure thorough, transparent investigations and appropriate follow-up. Responsible countries need and deserve the space to work through what processes will be most effective, and this cannot be dictated from the outside. The benchmark should be a determined, objective effort to get to the truth of what happened and why. Where violations are found, those responsible should be held accountable and systems put in place to prevent recurrence. Jurisdictions that carry out such efforts in a diligent way should not face the threat that their efforts will be overrun by external bodies or foreign governments.

The efforts we describe, in themselves, will not bring an end to the Palestinian Israeli conflict, or satisfy all the calls for justice and accountability. That will require a longer process of peacemaking, one centered in the region and not in Geneva. As a Human Rights Council, we have a choice of whether to advance the protection of human rights through even-handed and serious engagement, or to set it back with politicized debates and unbalanced resolutions. Having made the decision to join this body, we are steadfastly committed to transforming it into a vehicle that advances our shared vision to protect human rights and fundamental freedoms around the world. During this session and in the months to come we hope you will join us in that effort.

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On October 16, 2009, the United States requested a vote and voted against a resolution entitled “The human rights situation in the Occupied Palestinian Territory, including East Jerusalem.” Mr. Griffiths delivered the U.S. explanation of vote, as excerpted below. The full text of the U.S. statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm). The Human Rights Council adopted the resolution with 25 states in favor, six opposed, and 11 abstaining. U.N. Doc. A/HRC/RES/S-12/1.

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We take the floor to express our disappointment at the outcome of this session. . . . We regret that the Council chose precipitous action rather than judicious deliberation regarding a 575 page report that has far reaching implications.

Special Sessions of the HRC should be used primarily to deal with urgent human rights crisis situations that require immediate action. We find it unfortunate that this Council agreed to this Special Session without giving the parties to the conflict adequate time to study the report and, in

accordance with the principle of complementarity, to conduct their own domestic investigations and follow-up of alleged violations of international law.

Prior to this deferral, the United States discussed elements of a balanced resolution—one that focused on accountability . . . .

Regrettably, this is not the resolution that is before us today.

This resolution goes far beyond even the initial scope of the Goldstone Report into a discussion of elements that should be resolved in the context of permanent status negotiations between the Palestinians and the Israelis.

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The United States has continued to stress the importance of holding all parties to this conflict, and indeed to all conflicts, accountable under international law. We were prepared to accept a resolution that did so in a balanced and constructive manner. Israel is a democracy with strong, independent institutions capable of addressing allegations through credible domestic processes, and we have encouraged it to use those institutions.

The Goldstone Report also called on the Palestinians to launch credible investigations to address allegations of Hamas' abuses and to demand that Hamas stop its clear violations of law. Hamas, a terrorist group, has neither the democratic structures, nor an independent judiciary, nor any demonstrated willingness to examine its violations of international humanitarian and human rights law. Yet these failings should not divert our attention from Hamas' own culpability.

The final, and most important point, I would like to make today is that the United States continues to focus our attention on our main goal: working with Israel and the Palestinian Authority to re-launch successful permanent status negotiations as soon as possible. Resolutions like the one before us today can only exacerbate polarization and divisiveness. . . .

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On November 5, 2009, by a vote of 114 in favor and 18 against, with 44 abstentions, the UN General Assembly adopted a resolution concerning follow up to the fact finding mission. U.N. Doc. A/RES/64/10. Among other things, the resolution endorsed the Goldstone Report and tasked the Secretary-General to report to the General Assembly within three months on implementation of the resolution. Ambassador Alejandro D. Wolff, U.S. Deputy Permanent Representative to the United Nations, delivered a statement explaining the U.S. vote against the resolution, which is available at <http://usun.state.gov/briefing/statements/2009/131448.htm>.

#### **4. Protection of Persons**

On October 30, 2009, Mark A. Simonoff, Counselor, U.S. Mission to the United Nations, addressed the UN General Assembly's Sixth (Legal) Committee on the report of the International Law Commission ("ILC" or "Commission") on the work of its sixty-first session. Excerpts follow from Mr. Simonoff's statement, providing U.S. views on the ILC's consideration

of the issue of protection of persons in times of natural disaster. The full text of the U.S. statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm); the ILC report is available at <http://untreaty.un.org/ilc/reports/2009/2009report.htm>.

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Regarding the topic of Protection of Persons in the Event of Disasters, the United States commends the Commission for its progress in this important topic, including the promulgation of initial draft articles 1 through 5, and congratulates the special rapporteur, Mr. Eduardo Valencia-Ospina, for his diligent stewardship of this topic.

We believe that the current draft articles make important progress in a number of areas. In the past, we have expressed reservations regarding adopting a rights-based approach for this endeavor. We continue to think that the Commission should focus its efforts on providing practical guidance to countries in need of, and providing, disaster relief. As the UN Secretariat has noted, this project could “elaborat[e] a set of provisions which would serve as a legal framework for the conduct of international disaster relief activities . . . thereby creating a legal ‘space’ in which such disaster relief could take place on a secure footing.” Among other goals, the output of the Commission could provide guidance for the myriad agreements that are entered into by relief providers and affected states. We thus welcome that the current draft article 2 emphasizes meeting the “essential needs” of persons affected by disasters.

In particular, we would encourage the Special Rapporteur to consider, in his ongoing work, the possible ways in which core humanitarian principles—neutrality, impartiality and independence—can be given shape in the context of disaster relief by the present project.

At the same time, the current draft articles raise a number of questions that merit additional consideration. While we are pleased that there is agreement that this project should not apply to situations of armed conflict, we believe that the current formulation of Article 4 needs further consideration to ensure that it draws the right line between situations in which the draft articles would—and would not—apply. We would welcome the views of the Special Rapporteur on the option of delineating the applicability of draft article 4 based on “cases of armed conflict.”

Finally, the United States strongly supports international cooperation and collaboration in providing disaster relief. We realize that draft article 5 awaits the elaboration of further articles to provide additional content. In preparing for that work, we would welcome the Special Rapporteur’s views on whether the duty to cooperate set forth in draft article 5 should have an identified goal, and whether further work is necessary to define facts that would trigger the duty to cooperate on the part of States.

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## **B. DISCRIMINATION**

### **1. Race**

#### ***a. International Convention on the Elimination of All Forms of Racial Discrimination***

On January 13, 2009, the United States submitted its one-year follow-up report to the Concluding Observations regarding the Fourth, Fifth, and Sixth Periodic Reports of the United States, which the Committee on the Elimination of Racial Discrimination issued on May 8, 2008. The U.S. follow-up report addressed the Committee's recommendations concerning combating racial profiling, preventing discrimination against non-citizens in the context of anti-terrorism efforts, U.S. compensation to the Western Shoshone Tribe for land claims, life imprisonment without parole for juvenile offenders, efforts to assist people displaced by Hurricane Katrina, and ways that the United States can enhance awareness about U.S. obligations under the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"). The report's discussion of U.S. efforts to promote awareness of the CERD is set forth below. The full text of the follow-up report is available at [www.state.gov/g/drl/rls/cerd\\_report/index.htm](http://www.state.gov/g/drl/rls/cerd_report/index.htm), along with the Committee's concluding observations and the previous U.S. reports. For additional background on the U.S. reports, see *Digest 2007* at 293-315 and *Digest 2008* at 275-84.

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#### **Paragraph 36**

##### **Recommendation:**

The Committee recommends that the State party organize public awareness and education programmes on the Convention and its provisions, and step up its efforts to make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware about the responsibilities of the State party under the Convention, as well as the mechanisms and procedures provided for by the Convention in the field of racial discrimination and intolerance.

##### **Response:**

Since appearing before the Committee in February 2008, the United States has begun efforts to engage in greater publicity, outreach and training regarding U.S. obligations under the various U.N. human rights treaties to which it is party. Now that the United States is current in meeting its reporting obligations under all of the U.N. human rights treaties to which it is party, the United States Department of State is in the process of formally communicating to federal agencies, the fifty states, federally recognized tribes and other appropriate entities and reminding them of U.S. obligations under the underlying conventions, the recent reports the United States government submitted to the Committee Against Torture, the Human Rights Committee, the Committee on the

Elimination of Racial Discrimination and the Committee on the Rights of the Child, and is including in these materials the observations and conclusions issued by the respective committees.

Additionally, the State Department has requested federal agencies with oversight over U.S. laws that implement obligations under the CERD to examine ways in which they can provide training on the CERD as part of their ongoing training activities. Relevant agencies are currently examining ways in which to incorporate such training.

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## ***b. World Conference Against Racism***

### ***(1) Durban Review Conference***

On February 14, 2009, Acting State Department Spokesman Robert Wood announced that the Department would send a delegation to the February 16–19 consultations for the April 2009 Durban Review Conference. In 2001, the U.S. delegation had left the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa, due to concerns about the proposed outcome documents for the conference. *See Digest 2001* at 267–68. For the same reasons the United States subsequently voted against several General Assembly resolutions concerning follow up to the Durban Conference’s declaration and program of action. *See Digest 2007* at 315–17 and *Digest 2008* at 284–85. In his February 14 announcement, Mr. Wood explained that the United States planned to assess the possibility of U.S. participation in the conference and intended “to work to try to change the direction in which the Review Conference is heading.” The full text of Mr. Wood’s statement is available at [www.state.gov/r/pa/prs/ps/2009/02/117339.htm](http://www.state.gov/r/pa/prs/ps/2009/02/117339.htm).

Two days later at the Durban Inter-Sessional Open-ended Intergovernmental Working Group Session in Geneva, Mark C. Storella, Chargé d’Affaires, a.i., U.S. Mission to the United Nations, Geneva, and head of the U.S. delegation, expressed U.S. concerns that the draft outcome document for the review conference “singles out Israel for criticism, places unacceptable restrictions on freedom of expression, under the guise of ‘defaming religion,’ and calls for payment of reparations for slavery.” At the same time, he stressed the U.S. belief that “it is important to try to make a positive contribution and to work with member states of the United Nations who, like us, want this process to achieve a successful review conference that focuses on combating racism and discrimination.” Mr. Storella’s statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm). The United States subsequently determined that its concerns about the draft outcome document had not been met and decided not to participate in the Durban Review Conference. *See, e.g.,* [www.state.gov/r/pa/prs/ps/2009/04/121876.htm](http://www.state.gov/r/pa/prs/ps/2009/04/121876.htm).

*(2) U.S.-hosted panel discussion on race and tolerance in the United States*

On June 5, 2009, the United States hosted a panel discussion, "In Pursuit of the Dream: Race and Tolerance in the United States in the 21st Century." The discussion took place in Geneva on the margins of the Human Rights Council's June 2009 session. Esther Brimmer, Assistant Secretary of State, Bureau of International Organization Affairs; Wade Henderson, President and Chief Executive Officer, Leadership Conference on Civil Rights; and Karen Stevens, Counsel to the Assistant U.S. Attorney General for Civil Rights, participated on the panel. Ms. Brimmer explained that in convening the panel, the United States was following up on its assurances during the Durban review consultations that it would continue to work with other states to discuss and address issues of racism. Ms. Brimmer called the panel discussion "just one element in our larger resolve to work actively and constructively on human rights and civil rights issues" and continued:

Those principles which are clearly articulated in the Universal Declaration of Human Rights are also rooted in ideals that we share in the United States and that we continue to try to realize. Sometimes painfully. Sometimes with difficulty. But succeeding generations of Americans have addressed these issues.

We realize, as the phrase is used, that it's been a long time coming. Some of the issues we've discussed today reveal the long distance we still have to travel before we can rest. While the U.S. treasures its freedoms, embraces its rich diversity and celebrates its history of struggle and progress, we know the struggle continues.

Excerpts follow from Ms. Stevens's remarks, providing background on the work of the Department of Justice's Civil Rights Division in combating racial discrimination in the United States. The full text of the panel discussion is available at [www.state.gov/p/io/rm/2009/127180.htm](http://www.state.gov/p/io/rm/2009/127180.htm).

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We enforce laws that prohibit discrimination in several areas in education, in housing, employment, that prohibit cruel and unusual punishment, police misconduct, that address the Constitutional requirements for conditions of confinement in prisons, nursing homes and other state institutions, and we also enforce criminal laws such as hate crimes laws, human trafficking and other criminal civil rights provisions.

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. . . [T]he President has requested an additional \$145 million [from Congress] to go to civil rights enforcement in 2010. This is at a time when the United States . . . is suffering a lot of

economic challenges and many other agencies and other divisions in the Department of Justice are facing freezes or cutbacks. But the President and the Attorney General made it known very early and very clearly that they wanted more civil rights enforcement. Again, with the action of Congress we expect to have the money and the additional attorneys and the other kinds of resources that will allow us to go out and do more of the kind of work that we all need to do.

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We have a renewed emphasis on employment discrimination. Our traditional employment discrimination [involves] looking into allegations based on race and looking into large-scale systemic problems that are driven by what we call intentional discrimination but also considering . . . what we call disparate impact which is the more subtle kinds of discrimination that sometimes may be even harder to identify and fight.

We have been working to expand our hate crimes laws so that the existing laws which cover crimes motivated by race, religion and color will be expanded and we will be allowed to enforce more of these cases across the country and not be limited to very particular kinds of crimes that also had to be linked to activities like voting or attending school or going to a restaurant that's open to the public. The hate crimes law would also add new categories such as disability, gender identity and sexual orientation.

We've been talking to minority businesses and their representatives about the programs that are in existence in the United States that allow or require the federal government in some cases to consider and offer additional assistance and sometimes extra consideration to small businesses that are owned by minorities. Those programs have been challenged in the United States very often. We have not been as active in defending those programs. We are now authorized and directed to both defend those programs very vigorously, and also to try and work with the agencies that actually administer the contracts to make sure that the programs are being designed in a way that will make them effective and legal.

We've also been able to meet more often with . . . civil society organizations to get their input and to consult with them so that we can do the work that we need to do in conjunction with them.

We've been continuing work that began in the aftermath of the attacks of September 11th, doing outreach to Muslim, Sikh, Arab-American and others of Middle Eastern or South Asian descent who really faced a backlash and a large increase in targeted attacks following 9/11. There are still sometimes violent attacks . . . on mosques and on individuals and threats, and we continue to investigate those and prosecute them where we can. But we also really established a dialogue.

We have something called the Rights Working Group which brings in probably 20 representatives of these different groups every six to eight weeks, and we sit down with them in a room with representatives of other agencies like the State Department, like our Department of Homeland Security, like our Department of Transportation that enforces security on the airlines, and with our immigration officers. Again, we in the Civil Rights division aren't empowered to solve the problems that these groups have with those agencies, but what we can do is bring people together in a room, give them an identified contact, try and help them elevate these concerns to the level where they can be addressed and they can at least get an answer even if it's not always the answer they want to hear. . . .

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### *(3) General Assembly resolution: Durban follow-up*

On November 2, 2009, the United States voted in the Third Committee against a resolution entitled “Global efforts for the total elimination of racism, discrimination, xenophobia and related intolerance, and the comprehensive follow-up to the Durban Declaration and Program of Action.” John F. Sammis, U.S. Deputy Representative to the Economic and Social Council (“ECOSOC”), provided an explanation of the U.S. vote, which is excerpted below. The full text of the U.S. statement is available at <http://usun.state.gov/briefing/statements/2009/131208.htm>. On December 18, 2009, the General Assembly adopted the resolution by a vote of 128 in favor and 13 opposed, with 143 abstentions. U.N. Doc. A/RES/64/147.

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Recognizing there is much more work to do, my government continues to pay close attention to issues of race, ethnicity and national origin. Just last week, President Obama signed legislation on hate crimes, strengthening the ability of our Justice Department and state and local law enforcement officials to deter and prosecute acts of violence motivated by anger against another’s race, ethnicity, gender, or faith.

Just as we believe embracing diversity is essential to the strength of the United States, we also believe it is critical to building a more peaceful and prosperous world. We are therefore dedicated to working with other nations to address discrimination and negative stereotyping whenever and wherever they occur. In this work, we consider the United Nations a vital partner.

During the June 2009 Human Rights Council session, the United States hosted a side event in which government and civil society representatives explored pitfalls and progress in the fight against racism. And earlier this year, we sent a distinguished delegation to attend negotiations on the draft outcome document for the Durban Review Conference. Our delegates met with over 30 delegations, the UN High Commissioner on Human Rights, and other interested parties. In addition, the State Department consulted with many capitals on our effort.

We are most grateful to the numerous country delegations and senior United Nations officials who worked to improve the review conference outcome document and re-focus the Durban Review Conference on the global fight to eliminate racism and racial discrimination. We regret that we were not able to achieve sufficient changes in the document to be able to participate.

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### ***c. Ad Hoc Committee on the Elaboration of Complementary Standards***

The Human Rights Council’s Ad Hoc Committee on the Elaboration of Complementary Standards convened two sessions in 2009. The Human Rights Council established the Ad Hoc Committee by its Decision 3/103 of December 8, 2006, to follow up on a decision of the 2001 Durban Conference. The Council directed the Ad Hoc Committee to produce

complementary standards that would close the gaps in the CERD and establish new norms to combat racism. The Human Rights Council also directed the Ad Hoc Committee to develop the standards either as a new convention or a protocol to the CERD. On September 28, 2007, the Human Rights Council adopted Resolution 6/21, by a vote of 32 in favor and ten against, with four abstaining. Resolution 6/21 recalled its earlier decision providing the Ad Hoc Committee's mandate and decided that the Ad Hoc Committee would hold its first session in the first three months of 2008. See [www2.ohchr.org/english/issues/racism/AdHocCommittee.htm](http://www2.ohchr.org/english/issues/racism/AdHocCommittee.htm); U.N. Doc. A/HRC/RES/6/21.

Before the Ad Hoc Committee's second session, October 19–30, 2009, the United States submitted written comments for the committee's Chairperson–Rapporteur. The U.S. submission, dated May 29, 2009, is excerpted in major part below. The full text is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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The United States has learned from the experience in our own country how crucial robust free expression and a thriving marketplace of ideas are to the promotion of tolerance, religious freedom, greater understanding among individuals of different backgrounds, and ultimately to the defeat of racist and discriminatory ideas in societies. Similarly, the United States believes in the importance of engaging in proactive governmental outreach and policies to assure racial, ethnic, and religious groups are protected and respect for diversity is promoted. Such governmental outreach can take a variety of forms, including the holding of town hall meetings and conferences with affected groups to listen and learn of the challenges they face and develop ways for the government to better address their concerns. These actions, which are based upon a moral and social responsibility to combat advocacy to national, racial or religious hatred, rather than a legal obligation to punish hateful expression, are essential to simultaneously maintaining robust free expression and allowing the government to take an active role in the promotion of tolerance and respect.

In addition, the United States believes in the importance of having robust legal regimes in place to deal with acts of discrimination. . . . Prosecuting . . . bias crimes to the fullest extent of federal law is a priority of the United States.

The United States does not believe that amendments to the international human rights legal framework—or new interpretations of existing legal obligations—are warranted to fight the scourges of racism, racial discrimination, xenophobia and related intolerance. Rather than seeking additional restrictions to expression, the United States advocates for more robust governmental outreach policies with respect to racial, ethnic and religious groups as well as the institution of appropriate legal regimes that deal with discriminatory acts and hate crimes.

The United States views racism, racial discrimination, xenophobia, and related intolerance as serious challenges facing the international community and believes they must be dealt with by the Ad Hoc Committee in a methodical and deliberate manner. The United States submits that this process of self-examination and action by [the] international community begin with greater opportunities to exchange views and address empirical data and practice on matters related to racial, ethnic, and religious diversity, discrimination, and intolerance so as to broaden our common

understanding of these important issues and provide a solid foundation for a broad-based consensus for further actions and initiatives.

The United States therefore proposes the following action points to be conducted during a year of study for consideration by the Ad Hoc Committee on the Elaboration of Complementary Standards:

- ***Causes of Advocacy of Hatred:*** A study on the underlying causes of and social pressures contributing to the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The study would seek to elaborate, through a careful analysis of empirical data on the occurrence and nature of such advocacy, tailored, practical recommendations on how best to promote tolerance and diversity without restricting human rights and fundamental freedoms;
- ***Global Trends Related to Such Advocacy:*** Multi-stakeholder workshops and seminars that contribute to this study through, *inter alia*, an examination of current trends related to such advocacy, including state and societal reactions and the factors that help minimize violent societal reaction to such advocacy. Presentations would include the experiences of groups in various parts of the world facing racism, racial discrimination, xenophobia and related intolerance;
- ***Evolution of Legal and Policy Frameworks:*** An assessment of the evolution of domestic legal and policy frameworks dealing with these issues and how effective they have been in dealing with intolerance and discrimination. Such an assessment would also review any distinctions made within these frameworks between actions taken based upon a moral and social responsibility to combat advocacy to national, racial or religious hatred on the one hand and those based upon a legal obligation to prohibit such advocacy on the other, and analyze the relative results of each;
- ***Compiling Successful and Unsuccessful Approaches:*** A compilation of successful approaches and lessons learned on the ground: what has actually worked in promoting greater tolerance and diversity? Have limitations on hate-filled speech helped to reduce acts of intolerance and promote religiously and racially diverse societies? Are limitations on hate-filled speech implemented in a non-discriminatory manner? What is the correlation in fact between domestic prohibitions on such advocacy and instances or patterns of discrimination and continued allegations of human rights violations?

The United States also strongly recommends the participation and inclusion of contributions of non-governmental organizations to the work of the Ad Hoc Committee in general, and to the above-mentioned studies in particular; such participation would greatly enhance and enrich continued efforts to fight racism, racial discrimination, xenophobia and related intolerance.

On October 19–30, 2009, the United States participated actively in the Ad Hoc Committee’s second session. Among other things, the United States presented an “Action Plan to Combat Racial and Religious Discrimination and Intolerance.” As the U.S. Mission to Geneva explained in a statement issued on November 9, the Action Plan “begins to lay out a roadmap for practical action, transparent reporting and greater civil society input the international community should pursue to strengthen compliance with their

existing obligations in international law in these areas.” The U.S. statement also reiterated the U.S. view that

existing international treaties, such as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all Forms of Racial Discrimination, clearly obligate states parties to take effective measures to combat racial and religious intolerance. Amendments to the international human rights legal framework—in the form of new treaties, protocols to existing treaties, or reinterpretations of obligations under those treaties—are not necessary and only divert attention from the real problem.

Simply put, there are evident gaps in effective implementation by governments of their existing obligations under international human rights law. . . . It is our firm belief that concrete actions to better address racial and religious discrimination and intolerance will do more to combat these scourges than years spent negotiating unnecessary legal instruments.

The full texts of the U.S. announcement and the Action Plan are available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

***d. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance***

***(1) Mission to the United States***

On June 16, 2009, Anna Morawiec Mansfield, Deputy Legal Adviser, U.S. Mission to the United Nations, Geneva, addressed the Human Rights Council in response to the report of UN Special Rapporteur Doudou Diene on his mission to the United States. The U.S. statement, excerpted below, is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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My government welcomed the Special Rapporteur’s visit and appreciated the opportunity for constructive dialogue. We arranged numerous meetings with various federal government agencies involved in enforcing the nation’s civil rights laws and administering the myriad programs whose goals are the elimination of racial discrimination and the promotion of respect for civil rights. . . .

The United States also appreciates the Special Rapporteur’s report and its constructive spirit. We note, as the Special Rapporteur did in his report, that the United States is profoundly committed to the fight against racism and racial discrimination, and we are aware of the ongoing challenges in this regard. As described in the report, the United States has made great progress in creating a legal



and institutional framework to combat racism and racial discrimination, but we recognize that more needs to be done. We circulated his report to the various government agencies with whom the Special Rapporteur met and they will consider it as they review existing laws, policies and programs in the various areas addressed by his report.

Permit us to briefly highlight some initiatives that respond to issues raised by the Special Rapporteur.

President Obama is committed to reinvigorating traditional civil rights enforcement in the United States and increasing the number of enforcement actions in a variety of areas, including police misconduct and employment discrimination. As evidence of this commitment, the President has requested 145 million dollars for civil rights enforcement by the Department of Justice's Civil Rights Division in 2010.

The Office for Civil Rights and Civil Liberties within the Department of Homeland Security, which is charged with reviewing public complaints of discrimination based on race, color, national origin, religion, and other bases, will strengthen its various programs by hiring additional investigators, immigration experts and other personnel. It will continue to strengthen efforts to engage with various religious and ethnic communities in the United States who have been impacted by government laws and policies enacted after the terrorist attacks of September 11. The Office has also recently created a training module designed to enhance the cultural competency of DHS personnel, as well as state and local law enforcement and intelligence analysts. Topics of discussion include: misconceptions and stereotypes of members of minority religions; a how-to guide for community interaction; effective policing without the use of ethnic profiling; and the U.S. Government's approach to engagement and outreach.

To bolster enforcement of employment discrimination laws, including the prohibition against race and color discrimination in employment, the President is seeking a 23 million dollar increase in the budget of the Equal Employment Opportunity Commission. This would allow the Commission to hire more front-line investigators and attorneys.

As part of a renewed emphasis on wage protection laws, the President's budget calls for increasing by more than 280 individuals the staff of the Department of Labor's Wage and Hour Division. The laws the Wage and Hour Division enforce protect employees without regard to race or immigration status. In addition, the Division has developed a series of "We Can Help" posters that are available in English and Spanish and that are designed to increase the public awareness of the wage protection laws and the Division's services. These posters supplement workers' rights cards, already provided in a variety of languages, to explain the protections afforded to vulnerable workers by the government's wage protection laws.

The United States continues to look for ways to support school districts seeking to achieve diversity and avoid racial isolation in its schools, as well as reduce the achievement gap between white and minority students. For example, Congress recently appropriated funds under Title Four (IV) of the Civil Rights Act program for technical assistance to school districts seeking to develop and implement student assignment plans to promote diversity and avoid racial isolation. And finally, the American Recovery and Reinvestment Act [Pub. L. No. 111-5, 123 Stat. 115] provides new funding to improve education for at-risk students and to narrow the achievement gap while stimulating the economy.

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## *(2) Report to the Human Rights Council*

On September 30, 2009, Githu Mugai, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, reported to the Human Rights Council. Sarah Cleveland, State Department Counselor on International Law, delivered a statement on behalf of the United States, stating in part:

Racism, racial discrimination, xenophobia and related intolerance are serious challenges facing the international community and the United States believes they must be examined methodically and deliberately. The United States submits that this process of self-examination and action by the international community begin with greater opportunities to exchange views and address empirical data and practice on matters related to racial, ethnic, and religious diversity, discrimination, and intolerance—notably through discussions in the Ad Hoc Committee on Complementary Standards—so as to broaden our common understanding of these important issues and provide a solid foundation for a broad-based consensus for further actions and initiatives.

Ms. Cleveland's statement also reiterated U.S. views on the concept of "defamation of religion" and U.S. support for religious freedom. See B.4.d. below for discussion of U.S. responses to the Special Rapporteur's findings on the issue of intolerance and discrimination on the basis of religion. The full text of Ms. Cleveland's statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

## **2. Gender**

### ***a. Reproductive health: Rescission of Mexico City Policy***

On January 23, 2009, President Obama rescinded the "Mexico City Policy," which had directed the U.S. Agency for International Development to withhold USAID funds from any nongovernmental organization using non-USAID funds to engage in activities relating to abortion. "It is clear that the provisions of the Mexico City Policy are unnecessarily broad and unwarranted under current law, and for the past eight years, they have undermined efforts to promote safe and effective voluntary family planning in developing countries," President Obama stated. "For these reasons, it is right for us to rescind this policy and restore critical efforts to protect and empower women and promote global economic development." President

Obama also expressed his intention “to work[] with Congress to restore U.S. financial support for the U.N. Population Fund,” thereby “joining 180 other donor nations working collaboratively to reduce poverty, improve the health of women and children, prevent HIV/AIDS and provide family planning assistance to women in 154 countries.” The President’s statement is available in full at Daily Comp. Pres. Docs., 2009 DCPD No. 00018, p. 1. His accompanying memorandum to the Secretary of State and the Administrator of USAID, excerpted below, is available in full at Daily Comp. Pres. Docs., 2009 DCPD No. 00015, pp. 1-2.

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The Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)), prohibits nongovernmental organizations (NGOs) that receive Federal funds from using those funds “to pay for the performance of abortions as a method of family planning, or to motivate or coerce any person to practice abortions.” The August 1984 announcement by President Reagan of what has become known as the “Mexico City Policy” directed the United States Agency for International Development (USAID) to expand this limitation and withhold USAID funds from NGOs that use non-USAID funds to engage in a wide range of activities, including providing advice, counseling, or information regarding abortion, or lobbying a foreign government to legalize or make abortion available. The Mexico City Policy was in effect from 1985 until 1993, when it was rescinded by President Clinton. President George W. Bush reinstated the policy in 2001, implementing it through conditions in USAID grant awards, and subsequently extended the policy to “voluntary population planning” assistance provided by the Department of State. [Editor’s note: *See Digest 2001* at 283–93.]

These excessively broad conditions on grants and assistance awards are unwarranted. Moreover, they have undermined efforts to promote safe and effective voluntary family planning programs in foreign nations. Accordingly, I hereby revoke the Presidential memorandum of January 22, 2001, for the Administrator of USAID (Restoration of the Mexico City Policy), the Presidential memorandum of March 28, 2001, for the Administrator of USAID (Restoration of the Mexico City Policy), and the Presidential memorandum of August 29, 2003, for the Secretary of State (Assistance for Voluntary Population Planning). In addition, I direct the Secretary of State and the Administrator of USAID to take the following actions with respect to conditions in voluntary population planning assistance and USAID grants that were imposed pursuant to either the 2001 or 2003 memoranda and that are not required by the Foreign Assistance Act or any other law: (1) immediately waive such conditions in any current grants, and (2) notify current grantees, as soon as possible, that these conditions have been waived. I further direct that the Department of State and USAID immediately cease imposing these conditions in any future grants.

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On March 31, 2009, Margaret J. Pollack, Acting Deputy Assistant Secretary of State for the Bureau of Population, Refugees, and Migration, and head of the U.S. delegation to the UN Commission on Population and

Development (“Commission”), affirmed the U.S. commitment to promoting reproductive health in a statement to the Commission. Ms. Pollack stated:

The United States is firmly committed to reproductive health services. In his first week in office, President Obama rescinded the “Mexico City Policy,” which had made it more difficult for women in developing countries receiving U.S. assistance to access reproductive health information and services. In doing so, the President made clear that we should be supporting programs that help women and their partners make decisions to ensure their health and the health of their families.

In addition, last week we announced that the U.S. will once again fund UNFPA [the UN Population Fund], contributing \$50 million this fiscal year as provided in the Omnibus Appropriations Act of 2009 [see § 7079 of Public Law No. 111–8, 123 Stat. 909–10], a 130% increase over our last contribution in 2001. Congress has also approved \$545 million in bilateral assistance for family planning. This is a significant increase over last year. I highlight this fact to underscore the U.S. commitment to development assistance. Be assured that, even in these uncertain economic times, the U.S. will not retreat from this commitment.

The full text of Ms. Pollack’s statement is available at <http://usun.state.gov/briefing/statements/2009/march/131650.htm>.

#### ***b. Women and armed conflict***

##### ***(1) U.S. strategic plan for combating violence against women in Sudan and the Democratic Republic of the Congo***

On July 23, 2009, Secretary of State Clinton wrote Senator Jeanne Shaheen (D–New Hampshire), outlining U.S. initiatives to end the use of rape and sexual violence in conflict zones, particularly in Sudan and the Democratic Republic of the Congo (“DRC”). Secretary Clinton’s letter attached the proposed “Strategic Plan for Combating Violence Against Women in Sudan and the Democratic Republic of the Congo (DRC).” Secretary Clinton’s letter and the accompanying strategic plan, excerpted below, are available in full at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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. . . Around the world, women and girls continue to face egregious crimes of sexual violence in conflict zones. This violence both reflects—and reinforces—a culture in which human rights and fundamental freedoms are not fully respected. International human rights law clearly states that countries have a duty to prosecute and punish violence against women. U.S. leadership on this issue is vital, and strong action must match a call for an end [to] this violence. . . .

Although there are no easy solutions for ending the conflicts in Sudan and the DRC, we can—and must—take several steps both now and over the long term. We have successfully fought violence against women by strengthening assistance to survivors and by helping local authorities prosecute perpetrators in both the DRC and Sudan; however, given the rising violence and the extent of the devastation, we need to do more. We are leading efforts in the UN system to address violence against women . . . . We are also proposing a strategy that combines prevention and protection, treatment, prosecution, and partnership . . . .

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## **Strategic Plan for Combating Violence Against Women in Sudan and the . . . DRC**

### **I. Prevention and Protection**

U.S. government programs in Sudan and the DRC continue to use a grassroots approach to identify women and children at risk of rape, while following the four main protection principles: security, confidentiality, non-discrimination, and treatment with dignity. This approach helps to protect populations from reprisals and prevent future sexual violence. The United States is working with a number of UN agencies to help UN missions understand and respond to the specific vulnerabilities of women and girls in conflict situations.

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In order to be effective, peacekeeping forces must also develop appropriate skills and sensitivities regarding violence against women. U.S. peacekeeping training, through the Global Peace Operations Initiative (GPOI) and the Africa Contingency Operations Training and Assistance (ACOTA) program, incorporates training for peacekeepers in all regions on peacekeeping conduct, human rights, international humanitarian law, and combating sexual violence and trafficking in persons. The United States will incorporate these important human rights modules in all future GPOI-enabled training.

To help address violence against women in Darfur, the United States will continue to call for the United Nations Mission in Darfur (UNAMID) to increase its activities to protect women and girls, particularly those in and around IDP camps. We will also continue to call for all parties to the conflict to respect the rights of women and girls, and we will continue to urge the Government of Sudan to end its support for the *janjaweed* militia.

In the DRC, while keeping in mind the limitations that the current situation places on United Nations Mission in the Democratic Republic of the Congo (MONUC) soldiers in the East, the United States will call for MONUC [to] take a more proactive stance on protection. Initiatives could include increasing the number of full-time protection officers in the East, and establishing more mobile bases and mobile units to protect IDPs, women, and other vulnerable persons where they are most likely to encounter abuse—including military checkpoints, market paths, and firewood patrols. We will also explore ways in which the United States can provide more political support for MONUC's human rights officers who monitor conditions, particularly in light of ongoing harassment by the Congolese Armed Forces (FARDC) and police.

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### **III. Prosecution**

#### *Prosecution*

Despite some trials of FARDC soldiers on charges of rape, there is little accountability for violence against women in the DRC. The overwhelming majority of crimes committed by soldiers—including rape—go unreported and unpunished in the absence of a functional or reliable judicial system. The United States continues to support efforts in the DRC to strengthen judicial independence, expand access to justice, build the capacity of new judiciary personnel, and advocate for human rights. U.S. assistance, for example, was instrumental in the preparation of new laws on magistrates and the passage of a landmark law against sexual violence in 2006. However, impunity for perpetrators of human rights abuses remains a fundamental obstacle to protection. We will continue support for building the capacity of the judiciary and of civil society groups focused on strengthening the judiciary and citizens' access to justice.

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In the DRC, in concert with international partners, the United States will aim to speak out more systematically against the awarding of military posts to well-known or suspected human rights abusers. We will explore how we can encourage the Congolese Justice Ministry to better publicize key convictions of perpetrators of human rights abuses as well as how best to help build capacity of the media to report on such court decisions. Additionally, the United States will explore efforts to assist the government of the DRC in providing witness protection for those seeking justice following rape. Little or no progress will be made on the judicial front without serious investment in this vital element. We will also explore ways to increase and improve coordination efforts with the European Union and other donors regarding judiciary-related initiatives and efforts to fight VAW, not only to avoid duplication, but to maximize synergies and develop a joint strategy for fighting impunity and strengthening the judiciary in the DRC.

#### *Data Collection and Documentation*

Statistical reporting is critical to addressing and preventing violence against women. . . .

The United Nations/African Union Mission in Darfur (UNAMID) conducts interviews of victims and witnesses of human rights abuses, including violence against women, and maintains some level of paper documentation and statistics on these cases. The United States will advocate for increased reporting on violence against women by UNAMID. However, UNAMID does not possess the personnel or resources required to document cases with a view toward eventual prosecution; UNAMID is further constrained by ongoing Sudanese government efforts to restrict its activities. . . .

We are also exploring further ideas for public/private technology collaboration. For example, the State Department could coordinate with private U.S. and African forensic labs to donate equipment and training expertise for biological evidence-testing in the DRC, thereby improving prosecution of sexual violence perpetrators.

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## *(2) Security Council resolutions*

### *(i) Resolution 1888*

On September 30, 2009, the Security Council adopted U.S.-led Resolution 1888, concerning sexual violence in situations of armed conflict. U.N. Doc. S/RES/1888. A September 30 State Department press statement explained that the resolution contained “actions the UN and Member States can take to help prevent conflict-related sexual violence and end impunity” and built upon Security Council Resolutions 1325 (2000) and 1820 (2008). See [www.state.gov/r/pa/prs/ps/2009/sept/129997.htm](http://www.state.gov/r/pa/prs/ps/2009/sept/129997.htm); see also U.N. Docs. S/RES/1325 and S/RES/1820. Resolution 1325 “requires parties in conflict to respect women’s rights and support their participation in peace negotiations and post-conflict reconstruction,” and Resolution 1820 “establishes a clear link between maintaining international peace and security and preventing and responding to the use of sexual violence as a weapon of war.” See *Digest 2008* at 286–88 for additional discussion of Resolution 1820. The press statement also summarized the key elements of Resolution 1888, which the statement explained:

- Calls for the appointment of a Special Representative to lead, coordinate, and advocate efforts to end conflict-related sexual violence against women and children.
- Requests the Secretary General identify a team of experts to assist governments to prevent conflict-related sexual violence and address impunity, including through strengthening civilian and military justice systems and enhancing national capacity, responsiveness to victims and judicial capacity.
- Requests that UN peacekeeping missions provide information about the prevalence of sexual violence when reporting to the Security Council.
- Requests that UN Security Council Sanctions Committees consider patterns of sexual violence when adopting or targeting sanctions.
- Requests that the Secretary-General identify women’s protection advisors in peacekeeping operations in countries where appropriate.
- Calls for the Secretary-General to submit annual reports on the implementation of both this resolution and 1820, as well as for more systematic reporting on conflict-related sexual violence.

Secretary Clinton, who chaired the meeting at which the Security Council unanimously adopted the resolution, stressed its significance in a statement to the Council. Secretary Clinton’s statement, excerpted below, is available in full at

<http://usun.state.gov/briefing/statements/2009/september/130054.htm>.

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... [W]e're here to address an issue that has received too little attention, not only in these chambers over the last six decades, but I would suggest in all of our halls of government across the world. It is an important issue that goes to the core of our commitment to ensure the safety of the United Nations member-states and their citizens.

Under the UN Charter, the 15 members of this Council bear primary responsibility for maintaining international peace and security. Now, satisfying that responsibility [impels] us to protect the lives and physical security of all people, including the women who comprise half the planet's population. This responsibility is particularly acute in circumstances where peace and stability are challenged. Even though women and children are rarely responsible for initiating armed conflict, they are often war's most vulnerable and violated victims.

The resolution we passed today represents a step forward in our global efforts to end violence perpetrated against women and children in conflict zones, and it builds on two prior Security Council resolutions: Resolution 1325, which called on all parties in conflicts to respect women's rights and increase their participation in peace negotiations and post-conflict reconstruction efforts; and Resolution 1820, adopted last year, which affirms the ambitions set out in 1325, and establishes a clear link between maintaining international peace and security, and preventing and responding to sexual violence used as a tactic of war to target civilians. Yet despite these actions by the United Nations Security Council, violence against women and girls in conflict-related situations has not diminished; in fact, in some cases, it has escalated.

Now, reading the headlines, one might think that the use of rape as a tactic of war only happens occasionally, or in a few places, like the Democratic Republic of the Congo or Sudan. That would be bad enough, but the reality is much worse. We've seen rape used as a tactic of war before in Bosnia, Burma, Sri Lanka, and elsewhere. In too many countries and in too many cases, the perpetrators of this violence are not punished, and so this impunity encourages further attacks.

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The dehumanizing nature of sexual violence doesn't just harm a single individual or a single family or even a single village or a single group. It shreds the fabric that weaves us together as human beings, it endangers families and communities, erodes social and political stability, and undermines economic progress. We need to understand that it holds all of us back. Also, our failure as an international body to respond concretely to this global problem erodes our collective effectiveness. So we must act now to end this crisis not only to protect vulnerable people and promote human security, but to uphold the legitimacy of this body.

Now, the international community has made progress. Many peacekeeping mandates now include Security Council requests for strengthened measures to prevent and respond to sexual violence. In Chad and Sudan, UN peacekeepers have clear instructions underscoring their responsibility to protect local populations against sexual and gender-based violence.

And I recently met with the UN troops in Liberia, who provide an excellent example of the steps a UN mission can take, Mr. Secretary General, both through its own actions and in cooperation with the host government to prevent violence against women and girls. It is also very important that in Liberia, the United Nations mission includes an all-women police unit from India. That all-women police unit has helped to motivate more Liberian women to become police officers, and the mission has launched a joint UN-Liberian campaign against rape.



Now, these steps are essential, but alone they're not sufficient. So this resolution identifies specific steps that the United Nations and member-states can and should take to improve the UN response to sexual violence committed during situations of armed conflict. It calls on the Secretary General to appoint a special representative to lead, coordinate, and advocate for efforts to end sexual violence. We expect that person to engage at high levels with civilian and military leaders to spearhead the UN's activities on this front.

It also calls on the Secretary General to rapidly deploy a team of experts to work with governments to strengthen the rule of law, address impunity, and enhance accountability while drawing attention to the full range of legal venues that can be brought into play, including domestic, international, and mixed courts that bring local and international judges and prosecutors together to strengthen local justice systems.

We must also recognize that ending conflicts outright is the most certain path to ending sexual violence in conflict. So pursuing peace and successful post-conflict transitions should be our highest priority. In states where conflict is taking place and those that are moving beyond it, local police must receive better training, the rule of law must be strengthened, and survivors must be ensured full access to justice and protection throughout the judicial process. We envision that this team of experts called for in this resolution will help us strengthen initiatives like those.

Now, beyond the measures outlined in the resolution, the Security Council should take additional steps. Protecting women and children should be a critical priority for all troops who wear the blue helmet. To reflect this, new and renewed peacekeeping mandates should include language condemning sexual violence and giving further guidance to peacekeeping missions to work with local authorities to end it.

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In his speech at the General Assembly last week, President Obama challenged nations of the world to assume responsibility for the challenges confronting us. Certainly, the challenge of sexual violence in conflict cannot and should not be separated from the broader security issues confronting this Council. It is time for all of us to assume our responsibility to go beyond condemning this behavior, to taking concrete steps to end it, to make it socially unacceptable, to recognize it is not cultural; it is criminal. And the more we say that over and over and over again, the more we will change attitudes, create peer pressure, and the conditions for the elimination of this violation.

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Also on September 30, 2009, President Obama issued a statement welcoming the Security Council's action. President Obama's statement is available at Daily Comp. Pres. Docs., 2009 DCPD No. 00761, p. 1.

On October 2, 2009, Ambassador-at-Large for Global Women's Issues Melanne Vermeer and Ambassador-at-Large for War Crimes Issues Stephen Rapp briefed the press on Resolution 1888. Among other issues, Ambassador Rapp addressed questions about why the International Criminal Court is not the appropriate venue to address the issue of sexual violence in armed conflict and the role of the panel of experts the resolution requested the Secretary-General to convene. Excerpts follow from Ambassador Rapp's responses concerning those issues and Ambassador Vermeer's statements

stressing the importance of prosecuting perpetrators of sexual violence in armed conflict. The full text of the press briefing is available at [www.state.gov/s/gwi/rls/rem/2009/130211.htm](http://www.state.gov/s/gwi/rls/rem/2009/130211.htm).

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**QUESTION:** . . . [W]hy is the ICC . . . not the right venue for this kind of thing to be done? And [is the United States] at all hamstrung by your non-membership in the ICC, at least in terms of influence?

**AMBASSADOR RAPP:** Well, first of all, keep in mind that it is indeed within the jurisdiction of the ICC to deal with situations like those in the DRC. But there can only be . . . a relatively handful of cases brought in any place. And in the principle of the ICC is that—the preference is the cases be brought at the national level. And the ICC only becomes involved with high-level individuals, and only those cases that the state doesn't have the capacity or the will to handle itself. In the DRC, the ICC has indicted four individuals, three of whom are now in custody. Thomas Lubanga is on trial. It's part of the allegations and the evidence that's presented against him that he was involved in sexual violence, though the case deals with child soldiers.

There are two other cases that are coming up for trial very soon—Katanga and Ngudjolo, both involved in the DRC and accused of the crime of sexual violence. And there is a fourth case of an individual, Bosco Ntaganda, who is still at large.

In terms of our policy with the ICC, that's under review in our government. We're actively involved in that. . . . [I]n the second term of President Bush, the United States began to take, I think, an approach of greater cooperation with the ICC. As you recall, we didn't oppose the referral of the Darfur situation. And both the last administration and this . . . have opposed any effort to defer the prosecutor's investigation and indictment there that does involve allegations of sexual violence against individuals in Darfur. We'll see in the future, whether it's possible, as we develop our policy, that we can work constructively with the ICC on cases in other places where it has jurisdiction.

But that said, if it indicts four or five people in the Congo, that alone won't solve the problem. There are all these mid-level commanders and others whose units are committing these acts of gender violence. There are the men themselves that are responsible for those acts. That takes a major push within the national system and with international assistance if you're really going to have accountability. It needs to be a continuum. And there's no problem with us, at the moment, consistent with the work of the ICC, working at that level to develop a response.

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**QUESTION:** Just from your experiences with the Sierra Leone case, [what] would this type of panel of experts . . . do specifically right now and where?

**AMBASSADOR RAPP:** . . . [M]any of these courts were preceded by panels or experts that came in and talked about what the problems were and what needed to be done. Then once they come back, it'll be necessary to determine whether, for instance, what happened in Sierra Leone occurred, where there was then a partnership between the government and the United Nations to establish a court that would include international judges and prosecutors, but also include national people.

It may be that that . . . need not be done through a United Nations agreement with the government. It could be done by various countries working together with the Congolese

Government to establish, say, a mixed tribunal, where lots of Congolese people could be involved, but also international judges and lawyers and prosecutors and police and security officials could be seconded or detailed in there to assist the process. We want to do it in a cost-effective way.

One of the things you gain with a mixed tribunal—you gain international expertise, but you also gain a measure of independence. . . . If you bring in international players, you can provide a greater level of independence and less of a perception, for instance, of victor's justice.

And so that's one of the options here. But keep in mind whenever you bring internationals in, there's going to come a day when they leave, and you don't want . . . everything to go back the way it was. And that's why it's so important to partner with the local community to transfer the skills, to find in the legal tradition the talent and everything that exists, as I've seen in Africa, everywhere, the strengths that you can build on that would allow you to leave a legacy that will prevent these problems from happening again.

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**AMBASSADOR VERVEER:** And let me just add that it is absolutely critical in all of these cases, regardless where they occur, that prosecutions take place . . . . Because without that deterrent, we're not going to see the kind of change that we need to see around the world. So it's critically important not just that women who are traumatized and physically harmed in significant ways . . . are enabled to heal but also understand why they need to cooperate with justice to bring these kinds of cases to justice. . . . And that will only be the case to the extent that all the things that have been discussed here in terms of a justice system work their way through, that there is accountability and that the people who perpetrate these crimes are prosecuted for them.

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## *(ii) Resolution 1889*

On October 5, 2009, the Security Council adopted Resolution 1889, which elaborated upon Resolution 1325 (2000) in calling for wide-ranging measures to strengthen women's participation in peace processes. U.N. Docs. S/RES/1889 and S/RES/1325. The resolution followed the Security Council's adoption of Resolution 1888, discussed in B.2.b.(2)(i) *supra*, concerning women and girls in situations of armed conflict. Excerpts follow from the statement Ambassador Rosemary A. DiCarlo, U.S. Alternative Representative to the United Nations for Special Political Affairs, made to the Security Council after adoption of Resolution 1889, expressing strong support for it and stressing the need for implementation of Resolution 1325. The full text of Ambassador DiCarlo's statement is available at <http://usun.state.gov/briefing/statements/2009/130272.htm>.

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The Secretary-General notes in his recent report [U.N. Doc. S/2009/465] that, while much has been done in response to Resolution 1325 in the nine years since its adoption, armed conflict continues to have a devastating impact on women and girls—all too often leaving them wounded, traumatized,

sexually assaulted, socially and economically marginalized or without political power. The United States is in complete agreement with the Secretary-General on a key point: Member States must renew their commitment to Resolution 1325 and intensify their efforts to implement its provisions. We strongly support the Secretary-General's proposals for action and Resolution 1889 which we adopted today.

... [W]e have heard many times in this chamber that more women should be included in peace processes and post-conflict deliberations. If a sustainable peace is to be achieved in any post-conflict situation, a peace agreement must take into account the concerns of those most harmed by conflict. But more often than not, women are excluded from peace negotiations and peacebuilding efforts. In fact, the United Nations Development Fund for Women points out that since 1992 only 2.4 percent of signatories to peace agreements were women and women's participation in negotiating delegations averaged about 7 percent.

Women have often led the call for peace in conflict-torn societies. Let us recall the example of Liberia, whose grassroots women's organizations had a direct and visible impact on peace negotiations and post-conflict reconstruction efforts. The activism of these groups—on behalf of the welfare of the average citizen—helped to break the impasse produced by leaders of warring factions in the struggle for political dominance. But to do so, these Liberian women had to travel to Accra, Ghana, and demonstrate outside the seat of negotiations. Women should not have to go to such great lengths to be heard. The Secretary General rightly notes that Member States should ensure that women participate in decision making. And he adds that that the international community should pursue a strategy to ensure women's participation in all peace processes, including by providing appropriate training and capacity building programs toward this end.

... Resolution 1325 emphasizes the responsibility that all States have to put an end to impunity and prosecute those responsible for crimes against humanity and war crimes, including those relating to sexual violence and other assaults against women and girls. Resolution 1820, of 2008, established a clear link between maintaining international peace and security and preventing and responding to the use of sexual violence as a weapon of war.

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... We join others in the call for more systematic UN reporting on women's participation and inclusion in peacebuilding and planning and we request the Secretary-General to continue to appoint gender advisers to UN missions and to develop a set of indicators to track implementation of Resolutions 1325 and 1889.

... [T]he United Nations must do all it can to keep the issue of women, peace and security in the spotlight, especially as we look to the 10th anniversary of Resolution 1325 and the creation of a composite gender entity, an entity that the United States strongly supports. [Editor's note: For discussion of the composite gender entity, see Chapter 7.B.1.b.] We must all work together to ensure that half of the world's population is accorded fully equal rights and fully equal opportunities and we must work to end violence against women that destroys the very fabric of societies and hinders stability of lasting peace.

### ***c. Human Rights Council***

#### ***(1) Integration of a gender perspective into the Human Rights Council's work***

On September 28, 2009, the U.S. delegate addressed the Human Rights Council during its annual discussion on integrating a gender perspective into the Council's work, particularly the Council's universal periodic reviews of countries' human rights records. The U.S. statement, excerpted below, addressed the U.S. commitment to promoting human rights for girls and women. The full text of the statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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The U.S is deeply committed to the cause of making human rights a reality for millions of oppressed people around the world. Of particular concern to our Administration is the plight of women and girls, who comprise the majority of the world's unhealthy, unschooled, unfed, and unpaid. If half of the world's population remains vulnerable to economic, political, legal, and social marginalization, our hope of advancing democracy and prosperity will remain in serious jeopardy.

Secretary Clinton has noted, "[s]ocieties where women are accorded their rights and provided with opportunities for basic services—education, health, gainful employment—make progress and expand prosperity."

Earlier this month, the United States indicated its strong support for the "System-Wide Coherence" Resolution adopted at the UNGA. . . .

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#### ***(2) Human Rights Council resolution on elimination of discrimination against women***

On October 2, 2009, the Human Rights Council adopted a resolution on the elimination of discrimination against women. Among other things, the resolution requested the High Commissioner for Human Rights to produce a study on women's equality under the law that would recommend ways to promote elimination of laws discriminating against women. U.N. Doc. A/HRC/RES/12/17. The United States cosponsored the resolution, which Mexico and Colombia introduced, and made a statement explaining the U.S. position. The U.S. statement, excerpted below, is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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We believe that the Council should create a new mechanism to address this very important issue, and we hope that this resolution is the beginning of a process that will result in its creation. We would have preferred a stronger mandate in this resolution.

The resolution reinforces the obligation of States to take measures that are appropriate to eliminate discrimination against women. It calls upon States to revoke any remaining laws that discriminate on the basis on sex and to remove gender bias in the administration of justice. It stresses the need to promote equal pay for equal work or for work of equal value, which the United States interprets as calling for non-discrimination in terms of remuneration.

We urge the Council to continue to take strong action to promote and protect the rights of women.

### 3. Ethnicity

On April 2, 2009, Kyle Scott, Chargé d’Affaires to the Permanent Council of the Organization for Security and Cooperation in Europe (“OSCE”), made a statement to the OSCE in connection with International Roma Day. In his statement, excerpted below, Mr. Scott expressed the U.S. commitment to protecting and promoting the human rights of Roma people. The full text of Mr. Scott’s statement is available at <http://osce.usmission.gov/april2009.html>.

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... Despite important progress that has been made in the last decade, too many Roma still live on the margins of society. Roma continue to experience racial profiling, violence, discrimination, and other human rights abuses. Too often, they lack identity documents or citizenship papers, which exclude them from voting, social services, education, and employment opportunities.

During the last year, the participating States and the OSCE have given much-needed attention to the situation of Roma, including through the Supplementary Human Dimension Meeting last July, the visits by the High Commissioner on National Minorities and the ODIHR [OSCE Office for Democratic Institutions and Human Rights] to Italy, and in our Ministerial Decision 6/08 adopted in Helsinki. . . .

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Unfortunately, as Council of Europe Human Rights Commissioner Thomas Hammarberg observed at the 2007 HDIM [Human Dimension Implementation Meeting], even after the genocide of Roma, “there was no genuine change of attitude among the majority population towards the Roma.” Today, in some of OSCE participating States, local officials continue to describe Roma as “unadaptable,” routinely using a Nazi-era term.

Governments have a special responsibility to ensure that minority communities have the tools of opportunity that they need to succeed as productive and responsible members of society. The United States is deeply concerned about the escalation of anti-Roma hate crimes in some OSCE participating States. In this regard, we would welcome information from the Italian delegation regarding efforts to prosecute individuals for participating in mob attacks on Romani camps in 2007 and 2008, when Italian police provided protection to camp residents. We also support efforts by the Hungarian government to prosecute those responsible for recent violent attacks against Roma . . . .

In closing, the United States urges OSCE participating States to honor their commitment—first made a decade ago at the 1999 Istanbul Summit—to ensure that national laws and policies fully respect the rights of Roma. Furthermore, governments must commit to effectively enforcing these laws.

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## **4. Religion**

### ***a. Designations under the International Religious Freedom Act***

On January 16, 2009, the Secretary of State redesignated Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan, respectively, as a “country of particular concern” under § 402(b) of the International Religious Freedom Act of 1998 (Pub. L. No. 105–292), as amended. The eight states were so designated “for having engaged in or tolerated particularly severe violations of religious freedom.” 74 Fed. Reg. 21,843 (May 11, 2009). *See Cumulative Digest 1991–99* at 918–24 for general background on the statutory framework for such designations, as well as the Presidential measures toward designated countries the statute discusses.

### ***b. Annual Report on International Religious Freedom***

On October 26, 2009, the Department of State released the 2009 Annual Report on International Religious Freedom, covering the period July 1, 2008 through June 30, 2009, and transmitted the report to Congress pursuant to § 102(b) of the International Religious Freedom Act of 1998 (Pub. L. No. 105–292), as amended, 22 U.S.C. § 6412(b). The report is available at [www.state.gov/g/drl/rls/irf/2008](http://www.state.gov/g/drl/rls/irf/2008). In a press briefing on the release of the report, Secretary of State Clinton explained that the report examines “how governments in 198 countries and territories are protecting or failing to protect religious freedom” and noted the 2009 report’s “special focus on efforts to promote interfaith dialogues and tolerance.” Secretary Clinton stated:

The right to profess, practice, and promote one’s religious beliefs is a founding principle of our nation. . . . It is the first liberty mentioned in our Bill of Rights, and it is a freedom guaranteed to all people in the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.

I want to underscore that, because this is not just an American value. This was agreed to be a universal value. . . .

Further excerpts below from Secretary Clinton's statement provide U.S. views on how best to promote religious freedom. The full text of Secretary Clinton's statement is available at [www.state.gov/secretary/rm/2009a/10/130937.htm](http://www.state.gov/secretary/rm/2009a/10/130937.htm).

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I obviously believe that our country has been strengthened by its long tradition of religious pluralism. From the largest denominations to the very smallest congregations, American religious bodies and faith-based organizations have helped to create a more just and compassionate society. Now, some claim that the best way to protect the freedom of religion is to implement so-called anti-defamation policies that would restrict freedom of expression and the freedom of religion. I strongly disagree. The United States will always seek to counter negative stereotypes of individuals based on their religion and will stand against discrimination and persecution.

But an individual's ability to practice his or her religion has no bearing on others' freedom of speech. The protection of speech about religion is particularly important since persons of different faiths will inevitably hold divergent views on religious questions. These differences should be met with tolerance, not with the suppression of discourse.

Based on our own experience, we are convinced that the best antidote to intolerance is not the defamation of religion's approach of banning and punishing offensive speech, but rather, a combination of robust legal protections against discrimination and hate crimes, proactive government outreach to minority religious groups, and the vigorous defense of both freedom of religion and expression.

So it is our hope that the International Religious Freedom Report will encourage existing religious freedom movements around the world and promote dialogue among governments and within societies on how best to accommodate religious communities and protect each individual's right to believe or not believe, as that individual sees fit.

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Following Secretary Clinton's remarks, Michael H. Posner, Assistant Secretary for Democracy, Human Rights, and Labor, answered questions from the press. As excerpted below, Mr. Posner addressed a question seeking greater clarification on the U.S. position concerning debates over freedom of religion and expression at the United Nations. Mr. Posner's comments are available in full at [www.state.gov/g/drl/rls/rm/2009/130948.htm](http://www.state.gov/g/drl/rls/rm/2009/130948.htm).

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**ASSISTANT SECRETARY POSNER:** There are really two separate issues that have been raised and sometimes conflated at the United Nations. I was part of the delegation last month at the Human Rights Council, where we actually joined with Egypt in promoting a resolution on freedom of expression that did, in fact, meet our concerns. [Editor's note: *See* section A.3.a.(1) *supra*.] There was a debate in the context of that about how to deal with issues of defamation, and we agreed after much negotiation, much discussion, that there is a legitimate subject as to whether or not an individual, an individual of any particular faith, can be defamed and whether that kind of harassment or discrimination is to be condemned. It clearly is.

There's a second resolution that was promoted—that's been promoted by the Islamic Conference at the UN, which is a broader defamation of religion resolution. . . . And it goes, we think, too far in restricting free speech—the notion that a religion can be defamed and that any comments that are negative about that religion can constitute a violation of human rights, to us, violates the core principle of free speech which is so central to us in our own system.

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**ASSISTANT SECRETARY POSNER:** . . . [W]e're trying to keep the two issues separate, to be clear . . . that there are limits to free expression, and there are certainly concerns about people targeting individuals because of their religious belief or their race or their ethnicity. But at the same time, we're also clear that a resolution broadly speaking that talks about the defamation of a religion is a violation of free speech.

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### ***c. Defamation of religions***

#### ***(1) U.S. response to UN Office of the High Commissioner for Human Rights***

On August 12, 2009, the United States submitted a written response to the UN Office of the High Commissioner for Human Rights, excerpted below, for the High Commissioner's report concerning states' implementation of Human Rights Council Resolution 10/22 of March 26, 2009. U.N. Doc. A/HRC/RES/10/22. The resolution, which the United States voted against, was adopted by 23 votes in favor and 11 opposed, with 12 abstentions, and requested the High Commissioner to report to the Human Rights Council at its twelfth session. The U.S. submission attached the 2007 and 2008 U.S. submissions to the Secretary-General concerning defamation of religion, which are discussed in *Digest 2007* at 324–32 and *Digest 2008* at 288–90. The full text of the 2009 U.S. submission is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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As stated in its previous submissions to the United Nations, the United States does not believe the concept of “defamation of religions” is consistent with international human rights law. We believe

the resolution seeks unacceptable limitations on speech and that such measures do not properly address the underlying concerns emphasized in the text. . . .

The United States understands the primary concern of the resolution to be the negative stereotyping of religious groups, particularly of minority groups, and the contribution of such stereotypes to disrespect and discrimination. The United States shares concerns about the impact of negative stereotypes, and believes that such stereotyping, particularly when promoted by community, religious, or government leaders, contributes to disrespect, discrimination, and in some cases, to violence.

In his June 4, 2009 speech in Cairo, President Obama stressed that the United States must fight against the negative stereotyping of religion when he stated, “I consider it part of my responsibility as President of the United States to fight against negative stereotypes of Islam wherever they occur.” The United States believes that States have the tools to fight these problems at their disposal, and that the best way for governments to address these issues is to develop effective legal regimes to address acts of discrimination and bias-inspired crime; to condemn hateful ideology and proactively reach out to all religious communities, especially minority groups; and to vigorously defend the rights of individuals to practice their religion freely and exercise their freedom of expression.

\* \* \* \*

### **Vigorously Defend the Freedoms of Religion, Belief, and Expression**

Among the founding principles of the United States is that government should make no law prohibiting the freedom of religion, or abridging the freedom of speech. We strongly believe that protecting freedom of religion and freedom of expression promotes mutual respect and pluralism, and is essential to human dignity, robust civil society, and political and economic development. We firmly believe that all people should be free to choose and practice their faith based upon the persuasion of the mind and heart. Religion, and the freedom of religion, plays an important societal role in many countries, including our own, and is also crucial to the creation of tolerant and respectful societies in which negative stereotypes will carry little weight or meaning.

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As President Obama stated in Cairo, “Suppressing ideas never succeeds in making them go away.” Rather than seek restrictions to expression to deal with intolerance and stereotyping, the United States advocates for more robust governmental outreach policies with respect to racial, ethnic, and religious groups, such as those outlined above, as well as the enforcement of appropriate legal regimes that deal with discriminatory acts and hate crimes.

The President has sought a new beginning between the United States and Muslims around the world, and seeks to collaborate with proponents of this resolution, and with any country that wishes to join us, in an effort to address concerns of stereotyping, discrimination, and violence. In President Obama’s words, “Our problems must be dealt with through partnership; our progress must be shared.”

## *(2) General Assembly resolution*

On November 12, 2009, the United States voted against a resolution on combating defamation of religion in the General Assembly's Third Committee. John F. Sammis, U.S. Deputy Representative to ECOSOC, delivered a statement explaining the U.S. vote. The U.S. statement, excerpted in major part below, is available at <http://usun.state.gov/briefing/statements/2009/131923.htm>. The General Assembly adopted the resolution on December 18, 2009, by a vote of 80 states in favor, 42 against, and 61 abstaining. U.N. Doc. A/RES/64/156.

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The United States has long had concerns with the concept of defamation of religions, but we have tried, over the course of the last year in Geneva and New York, to articulate an alternative vision to address what we view as the root concerns behind this resolution. We believe that the increasingly splintered views on this resolution, both here and in Geneva, suggest that while a majority of member states may recognize that the underlying issues are extremely important, those issues are not adequately addressed in this resolution, and require careful consideration. We were pleased that we had the opportunity at the last Human Rights Council session, working in collaboration with our colleagues from Egypt and over 50 co-sponsors from all regions, to come to consensus on another divisive and connected issue, freedom of expression. We regret the early vote on the resolution this year, and more importantly, regret that there has not been an opportunity to address this problem in a spirit of consensus.

“So long as our relationship is defined by our differences,” our President noted in June, “we will promote conflict rather than cooperation, and continue to sow the cycle of suspicion and discord.”

United States concerns with the concept of the “defamation of religions,” and with how it seeks and has resulted in unacceptable restrictions on freedom of religion, and freedom of thought and conscience, are well known. But I would like to emphasize a few points here:

- Freedom of religion is a foundation of civil society; it is a human right, a social good, a source of stability, and a key to international security. The United States believes it is the duty of all governments to respect the ability of every individual to profess and practice his or her own faith, and we applaud the efforts of so many UN Member States that are actively doing so. We recognize, and deeply respect, that religion is a global phenomenon, a key source of identity, and a powerful motivating and mobilizing force around the world.

- We have also seen first hand the discrimination and violence that can be exacerbated by ignorance, intolerance and fear of persons with different religious faiths. We join the call of leaders from all parts of the world in saying that we believe it is incumbent upon governments to model respect and welcome diversity of religious belief.

- We also believe that governments have the tools to address intolerance at their disposal, and that these include a combination of robust legal protections against discrimination and hate crimes, proactive government outreach to minorities—including educating them on their means of redress, and the vigorous defense of freedom of expression and religion without discrimination.

- We have a good deal to learn from one another about how best to foster interreligious cooperation and dialogue. There are hundreds of thousands, if not more, examples of diverse

communities living in peace and partnership in all regions of the world, and we hope that the United Nations will help to give voice to these stories.

– Freedom of expression and freedom of religion are rights enshrined in the Universal Declaration of Human Rights. As many here have recognized in their own countries, we strongly believe that robust protections of speech and free and open dialogue are also an important part of the solution. When held up to the bright light of public scrutiny, hateful ideas are shown for what they are—lacking merit, and based on fear and ignorance. We believe that respectful and welcoming societies are built by the people on the basis of open dialogue and are informed by their experiences; they cannot be imposed by the government’s laws about who can say what when.

– We also believe that the United Nations must remain faithful to the central tenet of human rights law. Rights are held by individuals, not by governments or other institutions, and not by religions. We should embark on a conversation on how to build mutual respect and tolerance among the individuals who practice different religions, but in doing so should not lose sight of our overall goal to realize our dream of universal human rights for all individuals, including the rights to both freedom of expression and freedom of religion.

The United States will vote against this resolution because we can not agree that prohibiting speech is the way to promote tolerance, and because we continue to see the “defamation of religions” concept used to justify censorship, criminalization, and in some cases violent assaults and deaths of political, racial, and religious minorities around the world. Contrary to the intentions of most Member States, governments are likely to abuse the rights of individuals in the name of this resolution, and in the name of the United Nations. We are deeply committed to addressing concerns of intolerance and discrimination and are eager to work with the cosponsors and the rest of this body to address the root concerns behind the resolution in the spirit of consensus. Until then, however, we urge others to join us in voting no.

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#### ***d. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance***

On September 30, 2009, Githu Mugai, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, reported to the Human Rights Council. Sarah Cleveland, State Department Counselor on International Law, delivered a statement on behalf of the United States. Ms. Cleveland’s comments on intolerance and discrimination are excerpted below, and the full text of her statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm). Ms. Cleveland’s comments on other aspects of the report are discussed in B.1.d.(2) *supra*.

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The United States is committed to the fight against discrimination, intolerance, and xenophobia based on race, religion, or otherwise, and we appreciate the consideration of these issues undertaken by the Rapporteur. . . . [M]y government is strongly committed to religious freedom and has condemned the use of negative and derogatory stereotypes and discrimination and/or discriminatory

policies. We recognize that such stereotyping and discrimination affects individuals of all faiths and races, and express our strong condemnation of the types of such intolerance provided in the report.

As the Special Rapporteur noted, we recognize that all religious communities are affected by acts of intolerance and discrimination and believe these instances should be acknowledged and addressed. As we have pledged at the highest levels, we are committed to fighting against such intolerance and discrimination.

The United States shares the view of the Special Rapporteur that these incidents are rooted in intolerance, and that to tackle the root cause of this problem requires a broad set of policy measures, including in the areas of intercultural dialogue and education. Similarly, as we have learned through our own national experience, the Rapporteur's observation that more speech empowers and gives voice to minorities, educates people about cultural differences, increases acceptance, and is ultimately the strategic response to hate speech was particularly resonant.

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## 5. Disabilities

On July 30, 2009, the United States signed the UN Convention on the Rights of Persons with Disabilities ("Convention"). In remarks at the signing of the Convention, excerpted below, Ambassador Susan Rice, U.S. Permanent Representative to the United Nations, and White House Senior Advisor Valerie Jarrett described U.S. views on the treaty. The full text of their remarks is available at

<http://usun.state.gov/briefing/statements/2009/july/126836.htm>. See also the statement of Secretary for Health and Human Services Kathleen G. Sebelius, available at

[www.hhs.gov/news/press/2009pres/07/20090730a.html](http://www.hhs.gov/news/press/2009pres/07/20090730a.html). For background on the negotiation and adoption of the Convention, see *Digest 2002* at 283; *Digest 2005* at 320–21; and *Digest 2006* at 382–83.

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### Ambassador Rice

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This Treaty . . . is the first new human rights convention of the 21st century adopted by the United Nations and further advances the human rights of the 650 million people with disabilities worldwide. It urges equal protection and equal benefits under the law for all citizens, it rejects discrimination in all its forms, and calls for the full participation and inclusion in society of all persons with disabilities.

The United States is very pleased to join the 141 other countries that have signed this Convention in pursuit of a more just world. President Obama will soon submit it to the Senate for its advice and consent.

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We all still have a great deal more to do at home and abroad. As President Obama has noted, people with disabilities far too often lack the choice to live in communities of their own choosing; their unemployment rate is much higher than those without disabilities; they are much more likely to live in poverty; health care is out of reach for far too many; and too many children with disabilities are denied a world-class education around the world. Discrimination against people with disabilities is not simply unjust; it hinders economic development, limits democracy, and erodes societies.

These challenges will not disappear with the stroke of a pen. Our work is not complete until we have an enduring guarantee of the inherent dignity, worth, and independence of all persons with disabilities worldwide. . . .

\* \* \* \*

Ms. Jarrett

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. . . This extraordinary treaty calls on all nations to guarantee the rights . . . afforded under the Americans with Disabilities Act, urges equal protection and equal benefit before the law for all citizens, and reaffirms the inherent dignity, worth, and independence of all persons with disabilities worldwide.

It is fitting that we are signing this Convention just a few days after the 19th anniversary of the Americans with Disabilities Act. Due in large part to the ADA, we have made great progress. But as the President said last Friday, and as the Ambassador just said, we are still not satisfied. We have much work to do.

Today . . . I am pleased to announce the creation of a new, senior level disability human rights position at the State Department. This individual will be charged with developing a comprehensive strategy to promote the rights of persons with disabilities internationally; he or she will coordinate a process for the ratification of the Convention in conjunction with the other federal offices; last but not least, this leader will serve as a symbol of public diplomacy on disability issues, and work to ensure that the needs of persons with disabilities are addressed in international situations. By appointing the necessary personnel to lead and ensure compliance on disability human rights issues, the President reinforces his commitment to the UN Convention.

We look forward to the Senate giving swift consideration and approval to the Convention once the President submits it . . . for their advice and consent.

With this signing, we once again confirm that disability rights are not just civil rights to be enforced here at home; they are universal human rights to be promoted around the world.

On September 2, 2009, Kareem Dale, Special Assistant to the President for Disability Policy, addressed the Second Conference of States Parties to the UN Convention on the Rights of Persons with Disabilities in New York. Mr. Dale's statement, excerpted below, marked the first time the United States had participated in the conference. Mr. Dale's remarks are available in full at <http://usun.state.gov/briefing/statements/2009/september/128605.htm>.

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... [The Convention on the Rights of Persons with Disabilities] enlarges the circle of liberty and equality to more fully include the 650 million people around the globe—one tenth of the world’s population—who live with a disability. The principles that guide the Convention are powerful ones: a respect for inherent human dignity, worth, independence, and autonomy; the rejection of discrimination; the shield of equal protection and benefits under law; the call for full participation and inclusion in society; an insistence on equality of opportunity and accessibility; a respect for difference and an embrace of diversity.

These principles resonate profoundly in U.S. disabilities legislation. More than one in five Americans lives with a disability. The Americans with Disabilities Act of 1990 has become a bill of rights for millions of citizens, giving legal force to some of the strongest national protections against discrimination in the world. An important legislative follow-up, the Americans with Disabilities Act Amendments Act of 2008, provides even more powerful guarantees of the rights of citizens living with disabilities. . . .

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... [W]e turn ourselves to defend the human rights of citizens with disabilities both because it is wise and because it is just. Let our efforts serve to guarantee the inherent dignity, worth, and independence of all persons with disabilities worldwide. Let our efforts serve as an ongoing source of inspiration to all who cherish the ideals of dignity and equality. And let our efforts serve as a lasting reminder that, when we work together, old barriers can come tumbling down.

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On October 9, 2009, as excerpted below, the Department of State issued answers to frequently asked questions about the Convention. The full text is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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## **WHAT IS THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (“Convention”)?**

The Convention is an international treaty that sets out the obligations of States Parties to the Convention to promote, protect, fulfill, and ensure the human rights of persons with disabilities. The United Nations General Assembly adopted the Convention on December 13, 2006, and it was opened for signature on March 30, 2007. The Convention entered into force for States Parties on May 3, 2008. . . .

## **WHAT DOES THE CONVENTION SEEK TO ACHIEVE?**

... The Convention complements existing international human rights treaties, several of which have already been ratified by the United States, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination. . . .

\* \* \* \*

The Convention’s provisions cover a number of key areas such as:

- Equality and non-discrimination

- Participation in political life and access to justice
- Freedom from torture and cruel, inhuman and degrading treatment
- Accessibility, personal mobility, and reasonable accommodation
- Health
- Education
- Employment
- Rehabilitation

At its core, the Convention seeks to ensure that persons with disabilities enjoy the same rights as everyone else and are able to lead their lives as do other individuals, if given the same opportunities.

The United States has always been a world leader in ensuring the rights of individuals with disabilities, through legislation and enforcement measures. The United States has made great progress toward the goals of inclusion, equal opportunity, full participation, independent living, and economic self-sufficiency. By becoming a party to the Convention, the United States will continue its leadership role. And by ratifying and implementing the Convention, the United States is in a position to support, assist, and encourage other States to ratify *and implement* the Convention, contributing to verifiable improvements in foreign countries in guaranteeing to persons with disabilities equality of opportunity, non-discrimination, accessibility, and reasonable accommodation. This benefits the 650,000,000 people in the world who have a disability, including the vast number of Americans with disabilities who travel and reside abroad. Ultimately, it will be persons with disabilities, both inside and outside the United States, who will benefit from the global acceptance and implementation of this UN Convention.

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## **WHAT WILL THE CONVENTION REQUIRE OF THE UNITED STATES?**

Once the Convention enters into force for the United States, the United States will be required to implement the obligations imposed by the Convention. The Convention contains 33 substantive articles prescribing for States Parties in some detail how internationally recognized civil, political, economic, social and cultural rights are to be interpreted and applied to prevent discrimination against persons with disabilities. By requiring States to give effect to their obligations by “appropriate measures” or by “all appropriate measures”, the Convention adopts a broad and flexible approach to implementation that allows for the legal particularities of each State Party to be taken into account. The Convention describes (but does not define) persons with disabilities (Article 1), and defines discrimination and reasonable accommodation (Article 2); requires States Parties to take measures to ensure the protection and enjoyment of civil, political, and economic, social, and cultural (ESC) rights by persons with disabilities on an equal basis with others (ESC rights to be “progressively realized”); and establishes a Committee on the Rights of Persons with Disabilities (Committee) to consider initial and periodic State Party reports on the measures they have undertaken to implement the Convention.

## **WILL THE CONVENTION REQUIRE CHANGES TO UNITED STATES LAW?**

Most provisions of the Convention, which seeks to eliminate discrimination against persons with disabilities, are consistent with current U.S. federal legislation, which contains a vast and effective array of provisions and programs to fight discrimination against persons with disabilities. These laws include the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, and the Individuals with Disabilities Education Act, among other laws. . . .



[S]ubject to appropriate reservations, treaty ratification would *not* require changes to United States law.

### **WILL THE CONVENTION HAVE AN EFFECT ON THE LAWS OF THE 50 STATES AND THE DISTRICT OF COLUMBIA?**

Many human rights treaties deal with subjects governed principally by state law in the United States. This Convention is different, however, as the rights and protections of persons with disabilities have largely been federalized. The United States has a broad array of federal laws, programs, and benefits designed to advance the human rights of, and eliminate discrimination against, persons with disabilities. These statutes regulate the conduct of the federal government, state and local governments, employers with 15 or more employees, places of public accommodation, and public transport, among others.

Notwithstanding the broad array of federal legislation protecting the rights of persons with disabilities, certain treaty provisions would be implemented largely by state law, including Article 12 on civil capacity, Article 14 on detention and civil commitment, and Article 23 on marriage and family relationships. To the extent that it is not clear that the laws of the 50 states and the District of Columbia are consistent with the Convention's obligations, any gaps may be addressed by a taking a reservation to the relevant treaty provision.

### **IF THE UNITED STATES RATIFIES THE CONVENTION, WHO OR WHAT WOULD OVERSEE OR ENFORCE THE TREATY?**

Articles 31 through 40 of the Convention set out arrangements for monitoring of the Convention on both the national and international levels. At the national level, a State party must designate "one or more focal points within government for matters relating to the implementation of the present Convention." The State Party may also, if it wishes, designate a coordination mechanism within the government to facilitate related actions under the treaty.

In addition, like other human rights treaties which the United States has ratified, the Disabilities Convention establishes an international treaty monitoring body, called the Disabilities Committee, which receives and reviews initial and periodic Reports from States Parties on how that State Party has implemented its obligations under the Convention. The Committee issues Conclusions and Recommendations with regard to the Report, which typically recommend concrete steps that the State Party can take to improve treaty implementation. These Conclusions and Recommendations, as the names suggest, are recommendations and are *not* binding on the State Party. Similarly, General Comments issued by the Committee to aid in interpretation of the treaty provide guidance but are not binding on States Parties. In short, the United States would look to its domestic laws and domestic federal agencies to ensure treaty compliance.

## **6. Sexual Orientation**

On March 18, 2009, the United States declared its support for the UN Statement on Human Rights, Sexual Orientation, and Gender Identity. The statement of Robert Wood, Acting State Department Spokesman, concerning the U.S. action is set forth below and is also available at [www.state.gov/r/pa/prs/ps/2009/03/120509.htm](http://www.state.gov/r/pa/prs/ps/2009/03/120509.htm).

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The United States supports the UN Statement on “Human Rights, Sexual Orientation, and Gender Identity,” and is pleased to join the other 66 UN member states who have declared their support of this Statement that condemns human rights violations based on sexual orientation and gender identity wherever they occur.

The United States is an outspoken defender of human rights and critic of human rights abuses around the world. As such, we join with the other supporters of this Statement and we will continue to remind countries of the importance of respecting the human rights of all people in all appropriate international fora.

## C. CHILDREN

### 1. Guidelines for the Alternative Care of Children

On June 15, 2009, the Human Rights Council adopted by consensus a resolution entitled “Guidelines for the Alternative Care of Children.” U.N. Doc. A/HRC/11/L.13. In the resolution the Human Rights Council decided to submit the annexed Guidelines for the Alternative Care of Children (“Guidelines”), addressing the care of children who lack or risk lacking parental care, to the General Assembly for adoption. The Guidelines grew out of the Committee on the Rights of the Child’s September 2005 Day of General Discussion concerning children without parental care and, among other things, were designed to promote implementation of the Convention on the Rights of the Child. See U.N. Doc. CRC/C/153, ¶¶ 686–89.

On June 18, 2009, the U.S. delegation presented a statement in an observer capacity on the resolution and the Guidelines. The U.S. statement, excerpted below, is available in full at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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... [T]he United States strongly believes in creating healthy, supportive, and safe environments in which children can thrive and grow, particularly those children who lack parental care. We welcome the spirit embodied in the Guidelines for the Alternative Care of Children and believe that the Guidelines offer useful policy orientations for the protection of children without parental care. We would particularly like to thank the Government of Brazil for taking the initiative to craft this document, as well as the group of Friends, UNICEF, and NGOs for their contributions towards these Guidelines.

We remain concerned, however, about the seemingly overbroad scope of the Guidelines, and while we appreciate efforts to come to consensus on the content of the Guidelines, we regret that the timeline for consultations prevented us from fully consulting within our government for views. In addition, we would like to underscore the purpose and nature of the Guidelines, as stated therein, is to set out desirable orientations for policy and practice. As such, they are not obligatory or binding upon States, but rather reflect useful recommendations to shape the formation of domestic policy affecting children without parental care. In the coming months, we hope to gather more insight from

our domestic agencies and work with other Member States on ways in which to further concentrate and refine these Guidelines to improve practicability.

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On November 20, 2009, the UN General Assembly's Third Committee adopted by a consensus a resolution on "Guidelines for the Alternative Care of Children." Among other things, the resolution welcomed the Guidelines as a set of orientations for policy and practice. John F. Sammis, U.S. Deputy Representative to ECOSOC, made a statement explaining the U.S. position on the resolution before the United States joined consensus. Mr. Sammis reiterated U.S. concerns about the scope of the Guidelines, stating:

. . . In the United States, different aspects of the care of unaccompanied children are formulated locally and different approaches are used to ensure the well-being of unaccompanied children. We would like to underscore that the purpose and nature of the Guidelines, as stated therein, is to set out desirable orientations for policy and practice.

Our understanding . . . is that these Guidelines are not obligatory or binding upon States, but rather reflect useful recommendations states may use as they develop domestic policy affecting children without parental care.

The full text of the U.S. statement is available at <http://usun.state.gov/briefing/statements/2009/132223.htm>. The General Assembly adopted the resolution by consensus on December 18, 2009. U.N. Doc. A/RES/64/142.

## **2. Child Labor and Forced Labor**

On September 10, 2009, the U.S. Department of Labor released three reports on child labor and forced labor around the world, including a list of 122 goods from 58 countries made using child labor and forced labor. Secretary of Labor Hilda L. Solis issued a statement, excerpted below, concerning the reports. That statement is available at [www.dol.gov/opa/media/press/ilab/ILAB20091111.htm](http://www.dol.gov/opa/media/press/ilab/ILAB20091111.htm), and the reports are available at [www.dol.gov/ilab](http://www.dol.gov/ilab).

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Child labor and forced labor are inexcusable abuses of human rights, and these reports show that they continue to be a problem in 21st century society. We must do everything in our power to end these shameful practices.

While the United States is fundamentally opposed to the exploitation of any worker, the plight of children and adults working in forced labor is especially severe. These individuals are among the world's most vulnerable, and we have a moral duty to help and protect them.

It is also important to note that these are global challenges. All countries—including the United States—face situations of labor abuses. Allowing such practices to persist impedes the development of decent employment that can support families both in the U.S. and abroad.

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There is much we can do together to remedy this problem. The Labor Department's projects around the globe have helped rescue almost 1.3 million children from exploitive labor, offering them new hope through education and training. And, as I engage in a dialogue with my international counterparts, I will continue emphasizing the importance of eradicating forced labor and child labor. After all, ending such practices represents a global challenge, and international cooperation is essential in finding effective and lasting solutions.

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### **3. General Assembly Resolution on the Rights of the Child**

On November 20, 2009, the United States joined consensus when the General Assembly's Third Committee adopted a resolution on the Rights of the Child. The U.S. action reflected a shift in the U.S. position on the annual resolution, which the United States had voted against from 2001 to 2008. *See Digest 2008* at 317–18 and preceding Digests since 2000. John F. Sammis, U.S. Deputy Representative to ECOSOC, delivered a statement explaining the U.S. position. The U.S. statement, excerpted below, is available in full at <http://usun.state.gov/briefing/statements/2009/132225.htm>. On December 18, 2009, the General Assembly adopted the resolution without a vote. U.N. Doc. A/RES/64/146.

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Mr. Chairman, the United States is pleased to join consensus on the Rights of the Child resolution. Our decision reflects our deep commitment to promoting and protecting the rights of children in our own country and around the world.

Among its notable calls, this year's resolution encourages states to protect children from sexual exploitation and human trafficking. The United States has continued to strengthen our protections for children in this area and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 contains many provisions protecting children from severe forms of human trafficking. [Editor's note: *See Digest 2008* at 119–20 for discussion of the legislation.] The

United States has also taken the initiative to combat serious child exploitation issues such as child pornography and child labor.

This resolution recognizes the basic needs of children. In the United States, an extensive network of federal, state, and local programs protects children's rights on varied issues such as access to health care, foster care, and education. . . .

This year's resolution also highlights the important issues of [children's] ability to express . . . views in matters that affect them, either directly or through a representative, and their ability to participate in decisions that impact their lives. A number of American states have established offices of child advocates or ombudspersons, and others are considering establishing such offices. These child advocates provide an important vehicle through which children can express their views in crucial matters that affect them such as child custody, foster care, and juvenile justice. This resolution also stresses the importance of the equal participation of girls. The rights of girls still require special attention, as the majority of children who do not attend primary school around the world are girls and girls around the world are still subjected to trafficking, exploitation, and sexual violence.

This resolution recognizes that the rights of children around the world still have not been fully realized. The United States views UNICEF as a key partner in our global efforts to protect children and fully supports its initiatives to improve children's health care, education, protection from violence and exploitation, and advocacy on behalf of their rights. We particularly appreciate UNICEF's actions on behalf of children in emergency situations, its efforts to eradicate polio, and its work toward achieving the Millennium Development Goals related to basic universal primary education and the elimination of gender disparity in education. As an expression of our support, the United States provides a significant amount of voluntary contributions to UNICEF each year. In addition to its work with UNICEF, the United States works through UN partners like the UN High Commissioner for Refugees and the UN Relief and Works Agency for Palestine Refugees in the Near East to further promote the protection of children.

We join consensus on this resolution today with the express understanding that it does not imply that States must become parties to instruments to which they are not a party or implement obligations under human rights instruments to which they are not a party and, by joining this resolution, we do not recognize any change in the current state of treaty or customary international law. We thank the co-sponsors for their flexibility and hope to continue working with them with regard to PP2 and OP2. [Editor's note: The two paragraphs, among other things, state that the Convention on the Rights of the Child sets the standard for children's rights, reaffirm certain paragraphs from the General Assembly's 2008 resolution on the rights of the child (U.N. Doc. A/RES/63/241), and urge non-parties to the Convention on the Rights of the Child and its Optional Protocols to join the treaty and optional protocols.] We understand the resolution's reaffirmation of prior documents to apply to those who affirmed them initially.

Today marks the 20th anniversary of the adoption of the Convention on the Rights of the Child. While the United States has signed but not yet ratified the Convention, we are a party to its Optional Protocols. Consistent with the goals of the Convention, the United States continues its domestic efforts to strengthen already existing protections for children and to pursue new and innovative ways of ensuring that the rights of children are realized. In the last 20 years, around the world, the United States showed our commitment to the underlying spirit of the Convention, through our efforts to work with the countries represented in this room to improve the lives of children everywhere. We look expectantly towards the next 20 years with the hope and strong belief

that by working together, we can build upon the extraordinary progress we have already made for the world's children.

#### **4. Child Soldiers**

As discussed in section G. of this chapter, the Human Rights Enforcement Act of 2009, which President Obama signed into law on December 22, 2009, includes provisions concerning the recruitment of child soldiers. See Pub. L. No. 111-122, 122 Stat. 3480.

### **D. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, AND SIMILAR ISSUES**

#### **1. Health-related Issues**

##### ***a. Access to safe drinking water and sanitation***

On March 28, 2008, the Human Rights Council adopted Resolution 7/22, which decided to appoint an independent expert to study ways to clarify further human rights obligations concerning access to safe drinking water and sanitation. The resolution directed the expert to reflect the views of governments, among others, in the study and to report to the Human Rights Council. On June 3, 2009, the United States submitted views to Independent Expert Catarina de Albuquerque. The U.S. submission stated that international human rights law does not provide a “right to sanitation,” but affirmed the U.S. view that, as a matter of policy, sanitation is a “fundamental human need” that governments have a responsibility to realize for their people. The U.S. submission is provided below and is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm). On July 1, 2009, the Independent Expert submitted her report to the Human Rights Council. U.N. Doc. A/HRC/12/24.

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The United States takes domestic and international sanitation issues seriously and strongly supports the goal of improved sanitation. The United States likewise recognizes the importance of meeting basic sanitation needs to support human health, economic development, and peace and security.

The United States does not share the view that a “right to sanitation” exists under international human rights law. This view is informed by a review of the relevant instruments of international human rights law. Such a review demonstrates that there is no internationally agreed “right to sanitation.” Neither the Universal Declaration of Human Rights (UDHR) nor the International Covenant on Economic, Social, and Cultural Rights (ICESCR) mentions sanitation. Any right to sanitation would need to specify a definition, as well as specify the obligations and duties of governments and the correlative rights of individuals that would be entailed in the creation of such a legal “right”.

To say there is not a legal right to sanitation under international law does not detract from our abiding belief that sanitation is a fundamental human need, which countries as a matter of governance have a responsibility to realize for their people. A critical element of our common efforts to ensure basic sanitation around the world is the important role the international community must play in helping countries in need to accomplish this important objective. Ironically, focusing efforts on recognizing the right to sanitation is not, in our view, the most practical or effective way to improve basic sanitation globally. Seeking agreement on the scope and nature of such a right is likely to detract from valuable, more pragmatic and effective efforts to improve sanitation around the world and shift responsibility for providing these basic services away from national governments.

As noted above, while there is no “right to sanitation” under international law, as a matter of policy and good government it is manifest that governments should take effective action to promote access to basic sanitation. At the same time, access to basic sanitation can advance the realization of certain human rights, such as the right to a standard of living adequate for the health and well-being of all individuals. UDHR, Art. 25. Basic sanitation may also be appropriate or even necessary for the furthering of certain other “economic, social and cultural rights indispensable for [one’s] dignity and the free development of [one’s] personality.”

On October 1, 2009, the United States joined consensus when the Human Rights Council adopted a resolution on “Human rights and access to safe drinking water and sanitation.” U.N. Doc. A/HRC/RES/12/8. The United States cosponsored the resolution.

#### ***b. Human Rights Council resolution on access to medicine***

On October 2, 2009, the United States joined consensus on a Human Rights Council resolution entitled “Access to medicine in the context of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” U.N. Doc. A/HRC/RES/12/24. Before the Council adopted the resolution, Douglas M. Griffiths, Chargé d’Affaires, a.i., U.S. Mission to the United Nations, Geneva, delivered a statement explaining U.S. concerns about aspects of the resolution. The U.S. statement, excerpted below, is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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This resolution addresses an issue of tremendous importance. Improving access to medicines is an important priority for the United States. That is why President Obama has requested \$63 billion over the next six years to fight global diseases. Our investments in programs to combat HIV/AIDS, malaria, TB and other diseases save millions of lives, reduce maternal and child mortality, and reflect our nation’s leadership as a positive force for progress around the world. A recent example of our commitment is the President’s decision to make ten percent of the U.S. H1N1 vaccine supply available to other countries, through the World Health Organization. In concert with partners, we will assist those who would not otherwise have direct access to the vaccine.

The United States has strong concerns with a number of the provisions of the resolution. The United States regrets that the resolution, in the context of human rights, has a select emphasis on issues of intellectual property and trade. There are clearly broader issues and challenges for countries related to access to medicines, including tax and tariff policies and sufficient health systems in place to support health delivery, services, and access at the national level. The United States supports the Doha Declaration on TRIPS [Trade-Related Aspects of International Property Rights] and Public Health and wishes to emphasize that nothing in this resolution is intended to or should be interpreted as altering the scope or meaning of that Declaration. [Editor's note: The Doha Declaration is WTO Doc. WT/MIN(01)/DEC/2, available through [www.wto.org/english/docs\\_e/docs\\_e.htm](http://www.wto.org/english/docs_e/docs_e.htm), the World Trade Organization's documents database.]

In operative paragraph 2, the resolution stresses the responsibility of states to ensure access to all. The U.S. interprets this as a responsibility to be progressively realized and joins with others in aspiring toward achieving such a goal.

The resolution invites the Office of the High Commissioner for Human Rights (OHCHR) to convene an expert consultation on these issues and provide a platform for the exchange of views. If this is to be pursued, the OHCHR needs to recognize that there have been significant discussions in other UN bodies and the World Trade Organization (WTO) on these issues, including a multi-year process at the World Health Organization (WHO) by a Commission on Public Health, Innovation, and Intellectual Property Rights that resulted in the adoption of the WHO Global Strategy and Plan of Action in 2008. [Editor's note: See [http://apps.who.int/gb/ebwha/pdf\\_files/A61/A61\\_R21-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/A61/A61_R21-en.pdf) for the WHO strategy and action plan.] There are also a number of procedural issues related to forming an appropriately representative expert consultation. We understand that, if this invitation is accepted, the mandate is for a single consultation involving an exchange of views and a summary of the discussions provided by the Special Rapporteur.

We would also like to encourage the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to consider and focus on other areas of his mandate, those that have been more neglected. The Special Rapporteur has already devoted notable time to issues related to IP and trade; the resulting 28-page report from March of this year largely revisited issues that have already been addressed in the WTO and WHO efforts noted previously.

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## **2. Food**

### ***a. Human Rights Council resolution***

On October 1, 2009, the United States joined consensus when the Human Rights Council adopted a resolution entitled "Follow-up to the seventh special session of the Human Rights Council on the negative impact of the worsening of the world food crisis on the realization of the right to food for all." U.N. Doc. A/HRC/RES/12/10. The U.S. statement explaining the U.S. position, excerpted below, is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).



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The United States is pleased to take the significant step of joining consensus on a resolution that discusses such an important topic. . . . The United States is dedicated to promoting food security around the world. That is why we are committed to the Millennium Development Goal of reducing by half the proportion of people who suffer from hunger and who live in extreme poverty by 2015. The United States agrees with the sentiment in this resolution that the world food situation is a problem of profound significance and we agree with much of what is stated in this resolution, especially the need to work together to ensure greater access to safe and nutritious food.

The Universal Declaration of Human Rights sets forth the right to a standard of living adequate for health and well-being, which includes the opportunity to secure food without discrimination. The International Covenant on Economic, Social, and Cultural Rights provides for a right to an adequate standard of living for health and well-being and provides for a right to be free from hunger, which are to be realized progressively in accordance with available resources, and which means access to food should be non-discriminatory and states who have undertaken a legal obligation to progressively realize these rights should, in accordance with their available resources, aid their citizens that are the most vulnerable to hunger. While the United States is not a party to the International Covenant on Economic, Social and Cultural Rights, and by joining consensus on this resolution does not recognize any change in the current state of conventional or customary international law regarding rights related to food, we are committed to human dignity and have established numerous programs both at the state and federal levels to assist our citizens in accessing food, which are particularly important in this time of economic difficulty. . . .

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### ***b. General Assembly resolution***

On November 19, 2009, the United States joined consensus when the General Assembly's Third Committee adopted its annual resolution on the right to food. This was the first time that the United States joined consensus on the right to food resolution at the General Assembly since the General Assembly began to consider resolutions on this topic in 2001. U.S. Adviser Craig Kuehl's statement explaining the U.S. position on the resolution, excerpted below, is available in full at <http://usun.state.gov/briefing/statements/2009/132187.htm>.

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Combating global hunger and promoting food security is a key foreign policy objective of President Obama and his Administration. At this year's "G8 Plus" Summit in L'Aquila, Italy, the United States, along with more than 25 countries and organizations, agreed on principles for a comprehensive and coordinated approach to support country-led food security strategies, and collectively pledged \$20 billion over the next three years to that effort. On September 26, Secretary of State Clinton and United Nations Secretary-General Ban Ki-moon co-hosted an event entitled

“Partnering for Food Security,” attended by more than 130 countries, to build further support for these principles. We look forward to working together with our partners to implement these principles in-country, on the ground. The United States, along with others, has also pledged its commitment to the Millennium Development Goal of reducing by half the proportion of people who suffer from hunger and who live in extreme poverty by 2015.

These lofty goals received additional endorsement during this week’s World Food Summit in Rome, where assembled nations declared their commitment to timely and sustained action, emphasized shared accountability for the development and implementation of food security strategies, and underscored the continuing importance of partnering with multilateral institutions. The United States is not a party to the International Covenant on Economic, Social and Cultural Rights, and by joining consensus on this resolution does not recognize any change in the current state of conventional or customary international law regarding rights related to food. It is our objective to achieve a world where everyone has adequate access to food, but we do not treat the right to food as a formal enforceable obligation.

We interpret this resolution’s references to the right to food, with respect to States Parties to the aforementioned Covenant, in light of its Article 2(1), in which they undertake to take steps “with a view to achieving progressively the full realization” of economic, social, and cultural rights. We interpret this resolution’s references to member States’ obligations regarding the right to food as applicable to the extent they have assumed such obligations. And while the United States has for the last decade been the world’s largest food aid donor, we do not concur with any reading of this resolution that would suggest that states have particular extraterritorial obligations arising from a right to food.

We interpret this resolution’s reaffirmation of previous documents as applicable to the extent countries affirmed those documents in the first place. While we join this resolution’s noting with appreciation and welcoming, respectively, work of the Special Rapporteur and the Committee on Economic, Social and Cultural Rights, we note significant disagreements with portions of their recommendatory documents, including the Special Rapporteur’s October 2009 report and the Committee’s General Comment No. 12.

The United States is committed to international trade liberalization and to achieving an ambitious and balanced conclusion to the World Trade Organization’s (WTO) Doha Round negotiations. By joining consensus on this resolution, we support the new market opening that can be achieved through international trade agreements, including the Doha Round, which in turn can generate the economic growth necessary to spur development. At the same time, we wish to clarify that this resolution will in no way undermine or modify the commitments of the United States or any other government to existing trade agreements or the mandates of on-going trade negotiations.

Similarly, the United States wishes to reiterate its view that the implementation of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) supports comprehensive approaches to food security by establishing the necessary incentives for research and development of new plant varieties and investment in biotechnology innovations that can address the challenges faced by farmers and agricultural systems. By joining consensus on this resolution, we support countries’ continued implementation of the TRIPS Agreement, which provides for patent and plant variety protection systems that generate many benefits for researchers, producers, consumers, and society, in the drive to promote global food security.

In this regard, we observe that the Special Rapporteur’s report could have been significantly strengthened by presenting a balanced view of the benefits of adequate and effective intellectual

property rights and plant variety protection for promoting important research and investment, addressing the needs of farmers, and ensuring food security.

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### **3. Development**

#### ***a. Human Rights Council resolution***

On October 1, 2009, the United States called a vote in the Human Rights Council and abstained from a resolution on the right to development. U.N. Doc. A/HRC/RES/12/23. Douglas M. Griffiths, Chargé d'Affaires, a.i., U.S. Mission to the United Nations, Geneva, delivered a statement, excerpted below, explaining the U.S. vote on the resolution. The full text of the U.S. statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm). Thirty-three states voted in favor of the resolution and 14 abstained.

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The United States has a longstanding and strong commitment to support development. In fact, we are the world's largest bilateral donor of overseas development assistance. Our Secretary of State, Hillary Clinton, has repeatedly emphasized that the promotion of development and human security is one of the crucial pillars of our country's foreign policy.

We reiterate our commitment to the Vienna Declaration and Programme of Action which stated that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. We believe that the creation of conditions favorable to the development of individuals is the primary responsibility of their States, and can be accomplished through good governance and effective and transparent institutions. We also of course believe that international cooperation can assist in this regard. We believe there is still much debate about the right to development and think it is important to try to find common ground on this topic. In this vein we look forward to working with the Working Group and the High Level Task Force. The new U.S. administration is actively re-evaluating its broader views on this issue; however, at this time we do not think it would be appropriate for any criteria related to right to development to evolve into a basis for consideration of an international legal document of a binding nature. We therefore regret that we must call a vote on this resolution and abstain.

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#### ***b. General Assembly resolution***

On November 19, 2009, the United States called for a vote and voted against a Third Committee resolution on the right to development. John F. Sammis, U.S. Deputy Representative to ECOSOC, delivered an explanation of the U.S. vote, which is excerpted below and available at

<http://usun.state.gov/briefing/statements/2009/132188.htm>. On December 18, 2009, the General Assembly adopted the resolution by a vote of 133 in favor and 22 opposed, with 33 abstentions. U.N. Doc. A/RES/64/176.

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... In addressing this 64th session of the General Assembly, President Obama spoke of developing a global economy that advances opportunity for all people as one of the four pillars that must fortify our future. He pledged to “integrate more economies into a system of global trade” and to “support the Millennium Development Goals”, “setting our sights on the eradication of extreme poverty in our time”.

These objectives align closely with the broader thrust of this resolution on the right to development. Notwithstanding, the United States must call a vote, as we do not believe the current text of the resolution reflects a genuine consensus on how best to achieve these goals. We will be voting no. In particular, at this time, we do not consider it appropriate for any criteria related to the right to development to evolve into a basis for consideration of an international legal standard of a binding nature. We also have concerns about this resolution’s numerous extraneous statements about topics that have little to do with the right to development, such as international governance, globalization, WTO negotiations, and indigenous peoples.

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#### 4. Global Economic and Financial Crisis

On October 1, 2009, the United States joined consensus when the Human Rights Council adopted a resolution entitled “Follow up to the 10th special session of the Human Rights Council on the impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights.” U.N. Doc. A/HRC/RES/12/28. As excerpted below, the U.S. Mission to the United Nations in Geneva issued an explanation of the U.S. position on the resolution. The full text of the statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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The United States joins consensus on this resolution as we recognize that the current economic and financial crisis presents unique challenges to all countries around the world.

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The United States emphasizes the primary responsibility of states to protect and promote human rights. We note that the current financial crisis may pose challenges to the universal promotion and protection of human rights; however, it is nonetheless imperative that States actively work to protect the human rights of individuals within their jurisdiction. While we all recognize that development facilitates the enjoyment of all human rights and that the global economic and

financial crisis presents unique challenges to the efforts of developing countries to achieve their national development goals, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.

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## 5. Environmental Issues

On October 2, 2009, the United States joined consensus when the Human Rights Council adopted a resolution on “The adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.” U.N. Doc. A/HRC/RES/12/18. Douglas M. Griffiths, Chargé d’Affaires, a.i., U.S. Mission to the United Nations, Geneva, delivered a statement, excerpted below, expressing U.S. concerns about the resolution’s use of the term “dangerous product” and with some of the Special Rapporteur’s recommendations. The full text of the statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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The United States joined consensus on this resolution as we recognize that dumping of toxic wastes can have a negative impact on the enjoyment of human rights, including civil, political, economic, social, and cultural rights. We commend the efforts of the delegation of Côte d’Ivoire to forge consensus on this important issue. We would like to offer a point of clarity on the use of the term “dangerous products” throughout the resolution. This term is vague, as any product that is misused may be called “dangerous.” We believe the intended focus of the resolution—restricted toxic or hazardous waste—is more limited than that vague term “dangerous” might suggest.

We also note that some of the recommendations in the reports of the Special Rapporteur are problematic. For example, the recommendations are quite critical of the International Convention For the Safe and Environmentally Sound Recycling of Ships, adopted earlier this year in Hong Kong. The United States believes that Convention will significantly improve the environmental impact from ship recycling worldwide. Indeed, that Convention and the work of IMO have already positively impacted ship recycling.

The United States anticipates a lively discussion during the panel to be held during the 13th session. We encourage the relevant experts to use established international and domestic authorities in this area. The panel should not replicate the role of the Special Rapporteur in proposing measures to reduce and eradicate the negative impact on human rights resulting from movement and dumping of toxic waste, but should be a forum for debate and discussion of challenges with the goal of increasing awareness and facilitating the work of the Special Rapporteur.

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## 6. Protection of Migrants

### *a. Human Rights Council*

On September 17, 2009, Brandon Prelogar, Special Advisor for Refugee and Asylum Affairs at the Department of Homeland Security, made a statement at a panel discussion on the human rights of migrants in detention centers convened during the Human Rights Council's twelfth session. Mr. Prelogar's statement, excerpted below, is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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The United States endorses the spirit of resolution 11/9 on the human rights of migrants in detention centers. The United States is strongly committed to the protection of human rights of all persons, including in the context of the detention of migrants. We take this responsibility very seriously and urge other States to do so.

I would like to reiterate that all States have the sovereign right to control admission to their territory and to regulate the admission and expulsion of foreign nationals. While international law permits the detention of persons who have violated a country's immigration or criminal laws, we recognize that States must respect the human rights of migrants, consistent with their obligations under international law, in particular under relevant treaties relating to human rights.

The purpose of temporarily detaining immigration violators should not be to imprison them, but to ensure public safety and remove them from the country as expeditiously as possible. As such, we call attention to the well-established principle that States have an affirmative duty to accept the return of their nationals who have been expelled from the territory of another state. The expeditious return of irregular migrants to their countries of origin is key to significantly decreasing detention periods.

Non-citizens enjoy substantial protections under the U.S. Constitution and other domestic laws, regardless of their immigration status. Additionally, many special provisions exist which afford additional protections for especially vulnerable populations like asylum seekers, refugees, victims of domestic violence, victims of particularly severe forms of trafficking, and children.

Notwithstanding that there are already many protections for migrant detainees under United States law, President Obama recently directed a review of our immigration detention system.

The Department of Homeland Security is refashioning its current detention system into a new model that is better suited to the civil detention authority of ICE Immigration and Customs Enforcement agency. It is a model that takes into account the fact that the majority of the ICE detention population is non-criminal, and that the average length of detention is just one month. It will be designed to flexibly adjust the degree and kind of custody used to match the wide variety of aliens ICE detains. In all cases, it will ensure humane treatment of detainees, including access to needed medical care and legal resources.

... Further, the ICE reforms underway will be seeking to maximize the availability of alternatives to detention.

The United States is a nation with a strong history of welcoming immigrants, and we are proud of this tradition. Our experience shows the incredible value of orderly and humane migration. We are committed to protecting the human rights of migrants, and will continue to work vigorously to uphold safe and humane standards in our policies and practices.

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### ***b. General Assembly***

On November 12, 2009, the United States joined consensus when the Third Committee adopted a resolution on the protection of migrants. John F. Sammis, U.S. Deputy Representative to ECOSOC, delivered a statement explaining the U.S. position on the resolution. The statement reiterated some of the points the U.S. delegation made during the Committee's consultations on the draft resolution and was substantially similar to U.S. explanations of position concerning previous General Assembly resolutions on the protection of migrants. The statement is available at <http://usun.state.gov/briefing/statements/2009/131924.htm>. See also *Digest 2008* at 338–39. The General Assembly adopted the resolution without a vote on December 18, 2009. U.N. Doc. A/RES/64/166.

## **E. INDIGENOUS ISSUES**

On September 28, 2009, the United States welcomed the report to the Human Rights Council of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya. See U.N. Doc. A/HRC/12/34. The U.S. representative, Ms. Courtney Musser, said the United States was

encouraged by the Special Rapporteur's efforts to further develop communication with the Permanent Forum and the Expert Mechanism so as to maximize the participation of indigenous groups in attendance at each event. While the Special Rapporteur remains focused principally upon specific cases of alleged human rights violations, the United States appreciates the Special Rapporteur's continued contributions to the thematic studies of the Permanent Forum and the Expert Mechanism. . . .

Further excerpts below provide U.S. views on consultations between indigenous people and governments. The full text of the statement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm). See also U.S. comments on the report of the Expert Mechanism on the Rights of Indigenous People on its Second Session, A/HRC/12/32, available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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We congratulate the Special Rapporteur for drawing attention to the fact that a lack of adequate consultation with indigenous peoples has in some countries led to anger and mistrust, which has spiraled into violence. We appreciate his pragmatic approach in suggesting that the character of consultation procedures and their object are shaped by the specific situation. My government agrees with the importance of adequate consultation to the effective implementation of government programs intended to improve the lives of all citizens, including indigenous peoples. The United States strongly supports the special rapporteur's advice to states that consultation does not accord "indigenous peoples a general "veto power" over decisions that may affect them, but rather establishes consent as the general objective of consultations with indigenous peoples." In the United States we have solicited tribal government views on how to improve the government-to-government relationship and consultation process relative to federal decision-making. It is essential to build confidence among all parties for the best public policies to emerge; the consultation process when properly carried out contributes to confidence building and the formulation of effective policy.

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## **F. TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT**

On January 22, 2009, President Obama issued Executive Order 13491, "Ensuring Lawful Interrogations," which mandates that the Central Intelligence Agency and all other U.S. agencies conduct interrogations of individuals in custody or under the effective control of the United States, in any armed conflict, using only the techniques authorized by or listed in Army Field Manual 2-22.3 on intelligence collection. 74 Fed. Reg. 4893 (Jan. 27, 2009). See Chapter 18.A.5.b. for a discussion of the new order.

## **G. JUDICIAL PROCEDURE, PENALTIES, AND RELATED ISSUES**

On December 22, 2009, President Obama signed the Human Rights Enforcement Act of 2009, which among other things requires the Attorney General to establish a section within the Department of Justice's Criminal Division to enforce laws "against suspected participants in serious human rights offenses." Pub. L. No. 111-122, 122 Stat. 3480. The statute authorizes the new section to:

- (1) take appropriate legal action against individuals suspected of participating in serious human rights offenses; and



- (2) coordinate any such legal action with the United States Attorney for the relevant jurisdiction.

The law defines “serious human rights offenses” to include “violations of Federal criminal laws relating to genocide, torture, war crimes, and the use or recruitment of child soldiers under sections 1091, 2340, 2340A, 2441, and 2442 of title 18, United States Code.”\*

The legislation also amends the U.S. criminal statute on genocide, criminalizes the provision of material support for genocide and recruitment of child soldiers, and makes conforming amendments to the genocide-related grounds for inadmissibility in § 212(a)(3)(E)(ii) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1182(a)(3)(E)(ii). The new law also makes the sections of the INA concerning grounds for inadmissibility, removability, and ineligibility for withholding of removal and asylum (8 U.S.C. § 1182(a)(3), 8 U.S.C. § 1227(a)(4), 8 U.S.C. § 1231(b)(3)(B)(iii), 8 U.S.C. § 1158(b)(2)(A)(iii)) applicable to offenses committed before, on, or after the date of enactment of the Child Soldiers Accountability Act of 2008. Pub. L. No. 111–122, 123 Stat. 3480; Pub. L. No. 110–340, 122 Stat. 3735. For additional background on the Child Soldiers Accountability Act, see *Digest 2008* at 312–14.

## H. DETENTION AND MISSING PERSONS

On January 22, 2009, in one of his first actions after taking office, President Obama issued Executive Order 13491, “Ensuring Lawful Interrogations.” 74 Fed. Reg. 4893 (Jan. 27, 2009). Among other things, the order, set forth standards and practices for interrogation of individuals in U.S. custody or control in armed conflicts and required the Central Intelligence Agency to close as quickly as possible any detention facilities as defined in the order. Chapter 18.A.5.b. provides additional details on the order.

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\* Editor’s note: On March 30, 2010, the Department of Justice announced the establishment of the Human Rights and Special Prosecutions Section in the Criminal Division. The new section’s responsibilities will include the ones the statute prescribes. A Department of Justice press release, available at [www.justice.gov/opa/pr/2010/March/10-crm-347.html](http://www.justice.gov/opa/pr/2010/March/10-crm-347.html), provided details on the new section.

## I. RULE OF LAW AND DEMOCRACY PROMOTION

### 1. Rule of Law at the National and International Levels

On October 14, 2009, Laura G. Ross, Senior Adviser to the Permanent Representative at the U.S. Mission to the United Nations, addressed the Sixth Committee of the UN General Assembly on its consideration of the rule of law at the national and international levels. For the first time since the Sixth Committee added the rule of law item to its agenda, the Committee focused its debate on a sub-topic, "Promoting the rule of law at the international level." Excerpts below from Ms. Ross's statement describe U.S. views on that sub-topic. The full text of the U.S. statement is available at <http://usun.state.gov/briefing/statements/2009/130581.htm>.

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Underlying the vast multitude of transactions and interactions that take place on a daily level, public and private, large and small, is a complex web of international law. We sometimes take for granted that international trade flourishes, international flights take off and land throughout the world, and millions of other trans-national activities occur with often seamless efficiency because people and businesses and countries are complying with the rules that comprise our shared international legal framework.

We rightly rely on the tools of international dispute resolution, whether it be through diplomacy, mediation, conciliation, arbitration or litigation. But we should not lose sight of the invisible web of international law that allows this modern globalized world to thrive, for more often than not, there is no need to resort to dispute resolution, as the wheels of commerce and diplomacy and daily international interaction keep turning.

We should not forget the need to promote the progressive development of international law in areas that need improvement, in areas that could benefit from further refinement or gap-filling. We should remain creative and flexible as we seek to advance and promote the further development of international law, including accepting that in some cases a global multilateral treaty is not necessarily the answer, and that sometimes . . . regional or bilateral or even a non-binding set of understandings can best address a particular need.

Through it all, we should bear in mind the complex and dynamic interaction between the rule of law at the international level and the rule of law at the national level. Compliance with international law at the international level—that constant daily compliance with the vast web of international law that we often take for granted—can lead to a culture of compliance at the domestic level. And the key to implementation of so many treaties is robust State implementation at the domestic level.

States have a key role to play in promoting respect for and implementation of law at the international level.

The United States has reinvigorated its commitment to the rule of law at the international level, including in the arena of international humanitarian and human rights law and through its participation in the work of multilateral institutions. . . .

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Multilateral institutions matter and, as President Obama and U.S. Permanent Representative Ambassador Susan Rice have stated, the United States is proud to resume its leadership role in multilateral institutions. Robust U.S. participation in multilateral institutions signals U.S. recognition of their potential to contribute to the welfare of individuals worldwide, including through practices such as the adoption and implementation of resolutions that affect the complex web of international law.

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## 2. Honduras

Following the June 28, 2009 coup d'état in Honduras that resulted in the removal of the country's democratically elected leader, President Jose Manuel Zelaya, the United States took numerous steps to help restore the country's constitutional and democratic order. On the day of the coup, President Obama called on "all political and social actors in Honduras to respect democratic norms, the rule of law, and the tenets of the Inter-American Democratic Charter. Any existing tensions and disputes must be resolved peacefully through dialog free from any outside interference." Daily Comp. Pres. Docs., 2009 DCPD No. 00516, p. 1.

On the same day, as detailed in Chapter 7.C.1.b., the United States joined consensus when the Permanent Council of the OAS unanimously adopted a resolution condemning the coup, demanding President Zelaya's reinstatement, and stating that no government arising from the coup would be recognized. In a statement to the General Assembly the following day, Ambassador Rosemary A. DiCarlo, U.S. Alternative Representative to the United Nations for Special Political Affairs, reiterated that, "As stipulated in yesterday's resolution passed by the OAS Permanent Council, we refuse to recognize any Government of Honduras other than the constitutionally legitimate government of President Zelaya." Ambassador DiCarlo continued:

. . . [W]e call on the international community to support the efforts of the OAS. We call on the international community to join together in solidarity with the Honduran people in demanding the peaceful restoration of democracy and constitutional order in Honduras. And we call on the international community to resist any outside interference in this process.

See <http://usun.state.gov/briefing/statements/2009/125797.htm>. The United States also joined consensus when the General Assembly adopted a resolution entitled "Situation in Honduras: democracy breakdown" on June 30, 2009. U.N. Doc. A/RES/63/301. Among other things the resolution condemned the coup d'état and expressed support for the OAS's efforts,

pursuant to Chapter VIII of the UN Charter, to resolve the crisis in Honduras. See Chapter 7.C.1.b., for discussion of U.S. support for two additional OAS resolutions on Honduras.

Throughout the rest of 2009, the United States actively supported the efforts initially facilitated by Costa Rican President Oscar Arias Sanchez and subsequently by an OAS-sponsored delegation of member state Foreign Ministers to restore democracy in Honduras. As discussed in Chapter 16.A.4.c.(2), in August the United States called the San Jose Accord, proposed by mediator and Costa Rican President Arias, the best solution for restoring Honduras's democratic and constitutional order. The United States expressed concern at the de facto authorities' unwillingness to accept the accord and took visa- and assistance-related measures against the de facto regime. See Chapter 16.A.4.c.; *see also* the October 28 statement to the General Assembly of Ambassador Alejandro D. Wolff, U.S. Deputy Permanent Representative to the United Nations, available at <http://usun.state.gov/briefing/statements/2009/131038.htm>.

On October 30, 2009, Secretary of State Clinton announced that the United States had brokered an agreement between President Zelaya and coup leader Roberto Micheletti to resolve the crisis. Secretary Clinton's statement is available at [www.state.gov/secretary/rm/2009a/10/131078.htm](http://www.state.gov/secretary/rm/2009a/10/131078.htm). The Tegucigalpa/San Jose Agreement for National Reconciliation and the Strengthening of Democracy in Honduras, which was based on the San Jose Accord, provided that the Honduran Congress should make a decision on President Zelaya's restoration. The agreement also provided for the establishment of a government of national unity and a commission for verifying compliance with the agreement, coordinated by the OAS. The agreement also called for the next Honduran government to form a Truth Commission within the first half of 2010. The agreement is available as OAS Doc. CP/INF.5928/09, available at [www.oas.org/CONSEJO/Documents%20INF2009.asp](http://www.oas.org/CONSEJO/Documents%20INF2009.asp).

On November 27, 2009, State Department Spokesman Ian Kelly issued a statement affirming the U.S. commitment to the restoration of Honduras's democratic and constitutional order and stressing the importance of the November 29 Honduran elections in that process. Mr. Kelly stated:

The November 29 national elections are another critical step in the restoration of the democratic and constitutional order in Honduras. The electoral process—launched well before June 28 and involving legitimate candidates representing parties with longstanding democratic traditions from a broad ideological spectrum—is conducted under the stewardship of the multi-party and autonomous Supreme Electoral Tribunal, which was also selected before the coup. The electoral

renewal of presidential, congressional and mayoral mandates, enshrined in the Honduran constitution, is an inalienable expression of the sovereign will of the citizens of Honduras. . . .

The holding of a free, fair and transparent election is necessary but not sufficient for Honduras to reestablish the democratic and constitutional order. In order to help achieve that objective, we will continue, along with others in the Americas, to support the step-by-step implementation of the Tegucigalpa–San Jose Accord as a democratic way forward for the Honduran people. . . .

*See [www.state.gov/r/pa/prs/ps/2009/nov/132501.htm](http://www.state.gov/r/pa/prs/ps/2009/nov/132501.htm); see also Ian Kelly's statement on the Honduran election, November 29, 2009, available at [www.state.gov/r/pa/prs/ps/2009/nov/132504.htm](http://www.state.gov/r/pa/prs/ps/2009/nov/132504.htm).*

On December 2, 2009, the Honduran Congress voted against restoration of President Zelaya. The following day, Arturo Valenzuela, Assistant Secretary of State, Bureau of Western Hemisphere Affairs, expressed U.S. disappointment with the Honduran Congress's decision, given the consistent U.S. policy since June 28 of condemning the coup and continuing to accept President Zelaya as Honduras's democratically elected and legitimate leader. Mr. Valenzuela added, however, that "the decision taken by Congress, which it carried out in an open and transparent manner, was in accordance with its mandate in Article 5 of the Tegucigalpa–San Jose Accord." Mr. Valenzuela concluded by stating that the United States would "continue to work with Honduran and international partners to help fulfil our overarching goal of supporting the restoration of democratic and constitutional order." Mr. Valenzuela's remarks are available in full at [www.state.gov/p/wha/rls/rm/2009/133101.htm](http://www.state.gov/p/wha/rls/rm/2009/133101.htm).

### 3. Iran

On December 18, 2009, Deputy State Department Spokesman Robert Wood issued a statement welcoming the General Assembly's adoption of a resolution "calling upon the Government of Iran to respect its human rights obligations fully." U.N. Doc. A/RES/64/175. The General Assembly adopted the resolution by 74 votes for and 49 votes against, with 59 abstentions. The full text of the statement, which is set forth in major part below, is available at [www.state.gov/r/pa/prs/ps/2009/dec/133898.htm](http://www.state.gov/r/pa/prs/ps/2009/dec/133898.htm).

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The United States welcomes the United Nations' final passage of the resolution calling upon the Government of Iran to respect its human rights obligations fully. In passing this resolution, the international community has demonstrated once again its deep concern about the deteriorating

human rights situation in Iran and the government's failure to uphold its obligations under its own constitution and international human rights law.

The resolution, first adopted last month by the UN Third Committee, expresses deep concern over the brutal response of Iranian authorities to peaceful demonstrations in the wake of the June 12 election. It calls on the Government of Iran to abolish torture and arbitrary imprisonment, as well as any executions carried out without due process of law. Furthermore, it calls for the end of execution of minors, as well as the use of stoning as a means of execution. The resolution also calls on Iran to release political prisoners, including those detained following the June election. Finally, the resolution calls on Iran to cooperate fully with and admit entry to [UN Special Rapporteurs].

Those in Iran who are trying to exercise their universal rights should know that their voices are being heard.

On November 20, 2009, Mr. Wood had issued a similar statement after the Third Committee adopted the resolution. See [www.state.gov/r/pa/prs/ps/2009/nov/132198.htm](http://www.state.gov/r/pa/prs/ps/2009/nov/132198.htm).

### ***Cross References***

*Trafficking in persons, Chapters 3.B.3. and 16.A.7.*

*International, hybrid, and other tribunals, Chapter 3.C.*

*New UN composite entity addressing women's issues, Chapter 7.B.1.b.*

*OAS resolution concerning Cuba, Chapter 7.C.1.a.*

*U.S. support for OAS efforts to restore the democratically elected president of Honduras, Chapter 7.C.1.b.*

*U.S. statements concerning the inviolability of the Brazilian embassy in Honduras, Chapter 10.B.3.*

*Environmental issues, Chapter 13.*

*U.S. sanctions to protest seizures of power by undemocratic means, Chapter 16.A.4.*

*Israeli-Palestinian conflict, Chapter 17.A.1.*

*Detainees at Guantanamo and in Afghanistan, Chapter 18.A.5.*